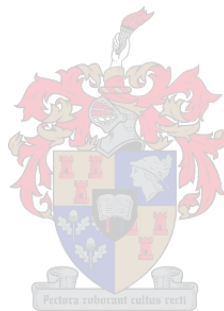


**A COMPARATIVE ASSESSMENT OF THE LAND REFORM
PROGRAMME IN SOUTH AFRICA AND NAMIBIA**

by

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DECLARATION

By submitting this thesis, I declare that the entirety of the work contained therein is my own, original work, that I am the owner of the copyright thereof (unless to the extent explicitly otherwise stated) and that I have not previously in its entirety or in part submitted it for obtaining any qualification.

Date: 17 December 2008

ABSTRACT

Land ownership is a contentious issue especially when different sectors of society have differing claims on values. Land is valued for its social and historical significance, but it also has productive and economic value. The intention of land reform programmes is usually to (re)establish equality in land holding in such a way as to ensure equity and agricultural productivity.

This study first discusses, and ultimately compares, the land reform policies of both South Africa and Namibia, with special reference to the respective histories of land ownership. An overview of the two countries' histories of colonial and segregationist policies are presented to provide the reader with insight into the racially unequal social, economic and political relations within the case studies concerned. The particular focus of this study falls on the legal frameworks and the policy developments of land restitution and the land redistribution policy programmes from the time of the transition to democracy. South Africa's and Namibia's policies are compared, highlighting the similarities and differences between the two.

South Africa developed a wider land reform policy, which stands on three legs: land restitution, land redistribution and land tenure reform. The first, land restitution, has been prioritised by government and has thus far contributed the most to the progress of land reform. It may also be seen as the beginning of redistribution. Land tenure does not receive much attention in this study, but the land redistribution programme does. Progress to date has overall been slower than expected and other stumbling blocks such as ineffective extension services, bureaucratic ineptitude and ensuring the productive use of land are not focused on. Government recently indicated that it intends, and has also taken some steps, to speed up the lagging process of land reform through an increased use of expropriation. Great criticism against this was voiced by the commercial sector. South Africa is a constitutional democracy and attempts to redress the injustices of the past within a legal framework.

Namibia seems to be progressing faster than South Africa in terms of its redistribution policy. One reason for this could be that the targets are more realistically set. It was decided that the restitution of ancestral land will not be followed (therefore, redistribution was not claims-based), but that all previously disadvantaged people will benefit from land redistribution. A land conference was held immediately after independence in 1991. Lately, however, momentum on the pursuit of its land reform policy seems to have subsided.

The conclusion of this study indicates that although there are differences in the respective countries' land reform policies, there are significant similarities. The debate between 'equity' and 'production' becomes even more important in the midst of world food price increases, a global financial crisis and the ever growing gap between the poor and the rich. More than a decade after the transition to democracy (amidst the chaotic land reform process in Zimbabwe), land and ownership remain a contentious issue in both countries.

OPSOMMING

Grondeienaarskap is 'n netelige saak regoor die wêreld, vernaamlik waar verskillende bevolkingsektore verskillende waarde-aansprake maak. Grond word waarde toegeëen volgens die sosiale en historiese betekenis daarvan, maar ook op grond van die produksie potensiaal en sosiale geregtigheid. Die doelwit van grondhervormingsprogramme is om gelykheid in grondeienaarskap te (her)bewerkstellig op so 'n manier dat volhoubare landbouproduktiwiteit en geregtigheid verseker word.

Hierdie studie bespreek eerstens, en uiteindelik vergelyk dit, die ontwikkeling van die grondhervormingsbeleide van beide Suid-Afrika en Namibië. 'n Oorsig van die twee lande se geskiedenis van koloniale en segregasie beleide word voorgelê om sodoende die leser insig te bied rakende die rasseongelykheid in sosiale, ekonomiese en politieke verhoudinge binne die twee gevallestudies. In besonder fokus hierdie studie op die wetlike raamwerke en die beleidsontwikkelinge van die grondrestitusie en die grondherverdelingsbeleidsprogramme vanaf die begin van die transisieperiode sedert demokrasie. Suid-Afrika en Namibië se beleide word vergelyk met die doel om ooreenkomste en verskille tussen die twee uit te lig.

Suid-Afrika het 'n omvattende grondhervormingsbeleid ontwikkel wat op drie bene staan: grondrestitusie, grondherverdeling en verblyfreg. Die eerste, grondrestitusie is geprioritiseer deur die regering en het tot dusver die meeste bygedra tot die vordering van grondhervorming. Dit verteenwoordig ook die begin van wyere herverdeling. Verblyfreg geniet nie baie aandag in hierdie studie nie, maar die grondherverdelingsprogram wel. Vordering tot op hede is oor die algemeen stadiger as verwag en ander struikelblokke soos oneffektiewe na-vestigingsdienste, burokratiese onbekwaamheid en die versekering van produktiewe grondgebruik is belangrik vir die sukses van die genoemde programme. Die regering het onlangs aangedui dat dit van plan is, asook dat stappe geneem is, om die sloerende proses van grondhervorming te versnel deur die toenemende gebruik van onteining. Baie kritiek hierteen, veral komende van die kommersiële landbou, is gelug. Suid-Afrika is 'n konstitusionele demokrasie wat

poog om binne die raamwerk van wetgewing die ongeregtighede van die verlede te herstel.

Namibië blyk vinniger as Suid-Afrika te vorder met die herverdelingsbeleid. Een moontlike rede hiervoor is dat die doelwitte meer realisties vasgestel is. Daar was byvoorbeeld besluit dat die restitusie nie uitgevoer sal word nie (herverdeling was dus nie eise-gedrewe nie), maar dat alle voorheen benadeelde mense deur grondherverdeling bevoordeel moet word. 'n Grondkonferensie het pas na onafhanklikwording plaasgevind in 1991. Die momentum om die grondhervormingsbeleid uit te voer, het egter afgeneem.

Die gevolgtrekking van hierdie studie dui daarop dat alhoewel daar verskille in die onderskeie lande se grondhervormingsbeleide is, daar ook belangrike ooreenkomste is. Die debat tussen 'geregtigheid' en 'produksie' word selfs meer belangrik in 'n tyd van wêreldvoeldselprysstygings, 'n globale finansiële krisis en die steeds groeiende gaping tussen die armes en die rykes. Meer as 'n dekade na die transisie na demokrasie (temidde 'n chaotiese grondherverdelingsproses in Zimbabwe) bly grondeienaarskap 'n netelige saak vir beide lande.

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ABBREVIATIONS

AALS	Affirmative Action Loan Scheme in Namibia
Agri-SA	Organised Commercial Farmers in SA
ANC	African National Congress
CDE	Centre for Development and Enterprise
CRLR	Commission on the Restitution of Land Rights
DA	Democratic Alliance of SA
DLA	Department of Land Affairs in SA
DUA	Democrat Union of Africa
GEAR	Growth Employment and Redistribution
HSRC	Human Sciences Research Council
IPPR	Institute for Public Policy Research
LCC	Land Claims Court
LRAC	Land Reform Advisory Commission
LRAD	Land Redistribution for Agricultural Development of SA
MLLR	Minister of Lands, Resettlement and Rehabilitation
NANGOF	Namibian Non-Governmental Organisation Forum
NDP	National Development Plan of Namibia
NEPRU	Namibian Economic Policy Research Unit
NGO	Non-Governmental Organisation
NLC	National Land Committee
NP	National Party of SA
PLAS	Pro-active Land Acquisition Strategy
PMG	Parliamentary Monitoring Group
RDP	Reconstruction and Development Programme of SA
SA	South Africa
SAIRR	South African Institute of Race Relations
SARPN	Southern African Regional Poverty Network
SFM	Strategic Farm Management
SLAG	Settlement/Land Acquisition Grant of SA
SWAPO	South West Africa People's Organization
WB	World Bank

CHAPTER I

INTRODUCTION

1.1 PROBLEM STATEMENT

In Southern Africa land has played a role in the liberation struggles of nations towards independence. Land has had, and continues to have connotations to religion, ethnicity, symbolism and economic power (Schlemmer, 2001: 37). The issue of rights in land and land ownership is central in the Southern African region where land dispossession took place. It was with the launch of democratisation in the region that the land reform process was activated (De Villiers, 2003: 2). For almost two decades land reform policies have been pursued in South Africa and Namibia, but it is still inconsistently applied in the Southern African region and have not yet been completed (Breytenbach, 2004: 46).

This research aims to discuss the land question in two countries of the Southern African region, namely South Africa and Namibia. Both of these countries experienced a colonisation period where extensive land dispossession on the basis of racially discriminatory policies and legislation took place. A liberation struggle followed to transform the imbalances of political power, land ownership and economic prosperity that weighed heavily in favour of the white populations. In Zimbabwe in particular, the *chimurenga* (war of liberation) as well as the ruling regime's policies since independence, were largely about land. South Africa and Namibia are no different, but important differences remain. This study will investigate these two countries' policies.

During the colonisation era and also the apartheid years, separate societies were created for the various ethnic and cultural groups within demarcated territories. The indigenous black people were forcefully removed from the land or property they rightfully resided on to confined areas where they had considerably less access to resources of land and infrastructure. On the other side of the spectrum, were the white settler communities who had privileged access to the vast majority of land, resources and developed infrastructure. A great imbalance of land-ownership on the basis of race and class were established till

this day. Independence governments have all resolved to redress these issues, but policies differ from one another.

The focus of this research is primarily on the land reform policies of restitution and redistribution in South Africa and Namibia at the start of their respective democracies. Restitution of land is when ancestral land is restored to the initial owner or comparable compensation attributed. Redistribution of land is to re-divide the land among the people and to make ownership and rights to it more accessible to those who were disadvantaged by the land dispossession. Then there is the issue of post-redistribution development policies which this project will not analyse in any detail. The emphasis of this study falls on the legal frameworks of the restitution and redistribution policies, the institutions that are involved in the formulation and implementation as well as the progress made with the process.

Land reform policies and systems can be pursued from different perspectives. The two main approaches are equity and production security. Policies based on the equity approach will cater for the acquirement of land on the basis of expropriation or nationalisation on a non-market basis. This is to restore ownership and justice. On the other hand, policies with a production security perspective focus on the sustainable use of land via an acquisition mechanism of a willing buyer-willing seller negotiation according to market value (Breytenbach, 2004: 47). This approach says food security cannot be compromised. The history of land dispossession and the consequent imbalances it created makes the land question in Namibia and South Africa a socio-political issue that is mostly pursued on the basis of equity but linked to developmental considerations as well. Nevertheless, the land reform process demands a review on the viability of this perspective.

Many implementation hurdles have been hampering the successful and speedy progress of land reform. Apart from availability and cost, other factors relate to the broad spectrum of processes in land reform, such as the lodging of claims, land acquisition, land distribution, land use planning, infrastructure, resettlement programmes,

development strategies and extension services. All have their own intricacies. It proves to be a challenge to integrate land reform with the broader policy objectives of alleviating poverty and rural development, since land reform alone cannot solve the region's developmental issues. The question is also raised whether the perspectives of equity and production security could be successfully combined.

South Africa and Namibia are chosen for this comparative study because their respective historical legacies and land reform policies share similarities. These two countries are not only neighbours but also adjacent to Zimbabwe where the land reform policy was taken to the extreme of land invasions and expropriation without compensation. Zimbabwe's political instability can possibly spill over into the region as ethnic tensions rise, poor populations migrate and rural poverty worsens. South Africa and Namibia have both declared that land reform will take place in an orderly and legal manner. Thozizile Gwanya, the new Director-General of the Department of Land Affairs contends, according to a report in the Sunday Times (Barron, 2007: 9), that food security and productivity is an extreme concern for the department and that it does not '...want to go anywhere near Zimbabwe'. In Namibia, the Ministry of Lands and Resettlement confirmed that only legal methods and policy guidelines will be used to acquire land (Kanguehi, 2006: 4).

1.1.1 SOUTH AFRICA

South Africa's past of racial and economic inequalities manifest itself in the skewed pattern of land ownership between white and black South Africans. The inequalities are a direct consequence of racially discriminatory laws that had been implemented since the start of the colonisation period and were exacerbated by the apartheid regime with its segregationist legislation. It was the policies on separate development between white and black which determined that the majority of the population (87 per cent) who were black were allowed to access and own only 13 per cent of all land (Breytenbach, 2004: 51).

Since 1994 restitution has been taking place to redress those who have been dispossessed of land under racially discriminatory legislation. The government also states that 30 per

cent (26 million hectares) of all agricultural land must be in black ownership by 2014. Recently, with the hope of reaching its target, government has pledged to accelerate the process of redistribution through three measures: 1) to speed up the land supply for landless black farmers by using its right to expropriate property according to provisions in the constitution; 2) proposing to reserve more land for South Africans by limiting the volume foreigners can purchase; and 3) decentralising land reform to local government levels and municipalities (Jordan, 2007b: 4).

Apartheid legislation that envisaged the systematic dispossession of black rights in and ownership of land began with the Natives Land Act (Act 27 of 1913) (Leon, 2001: 12). This Act prevented blacks to own land outside the native reserves while the rest of the country was made available for the use of whites only. This was thus the first step in formalising the limitations of the rights of black land ownership (Bosman, 2007: 3). In an attempt to further spatial segregation between the races, a second measurement was taken by introducing the Native Trust and Land Act of 1936. Under this Act the reserve areas were expanded and placed under the control of a system of native administration which invested authoritative power for land allocation in tribal chiefs. Even in the reserves, blacks could not acquire full ownership of land and as a result did not have tenure security. In the black homelands communal tenure applied.

A series of other policies and legislative measures were carried out to dispossess blacks of their land and rights to land. The Group Areas Act of 1950 was responsible for the often violent forced removals of blacks from areas that were allocated for whites only to the reserves (Bosman, 2007: 3). It affected mainly coloureds and Indians in urban areas. Any black South African who owned farmland or resided in white areas, had to reallocate to the reserves. A registration system for blacks was introduced to aid the control of blacks that worked or were tenants in white areas (Human Rights Watch as cited in Mason, 2004:8). It is approximated that 3.5 million people lost their land rights and were removed from their homes or land to the designated reserve areas (Bosman, 2007: 3 and Leon, 2001: 12).

In preparation for South Africa's transition to democracy, the De Klerk government took steps to make provision for certain reforms, and with relevance here, the reform of land ownership and distribution. The Abolition of Racially Based Land Measures Act (Act 108 of 1991) repealed the 1913 and 1936 land acts, as well as the Group Areas Act of 1966 and created a starting point for the envisaged land restitution process. Later in the interim constitution (1993-1996) "the right to have land restored was recognised as a constitutional right". Many parameters regarding the scope of application still had to be determined (De Villiers, 2003: 47).

The African National Congress (ANC) came into power with the first democratic elections in 1994 and with this liberationist party, came the obligation to rectify the past injustices of racially discriminatory legislation as well as the consequential inequalities it established. In relation to land reform these were, as Bosman (2007: 3) contends, the skewed land ownership pattern of a minority group that owned the majority of land, the indigenous majority that were "dispossessed" and the "dual system of tenure rights" (a modern property market of private land ownership and a traditional system of communal land ownership under the authority of tribal chiefs).

These issues named above, were to be addressed through the Land Reform Programme of the ANC government. The main objectives (De Villiers, 2003: 48 and Schlemmer, 2001: 76) are to:

- 1) redress the injustices of apartheid;
- 2) foster national reconciliation and stability;
- 3) underpin economic growth; and
- 4) improve household welfare and alleviate poverty.

The Constitution Act of 1996 (current constitution) provides for the legalistic and policy framework for this programme to be implemented.

The 1996 constitution sets out to provide for a socio-economic transformation, yet it recognises the importance of respecting everyone's basic human rights, for example the existing right to private property (Bosman, 2007: 4). Section 25(1) of the constitution

stipulates that “no one may be deprived of property”, but does however make provision for the government to exercise expropriation on certain conditions. Section 25(2) and (3) declares that expropriation can only be done if it is for a public purpose and that it is subject to just and equitable compensation. Furthermore, section 25(4), (5), (6) and (7) state that the government is committed to land reform and should thus take the necessary measures to provide security of tenure, access to land and restore rights in land to all of its people (De Villiers, 2003: 48).

The Land Reform Programme of 1994, made soon after the ANC took power, comprises of three elements: land *restitution* which aims to return land and compensate for land lost due to racially discriminatory laws, land *redistribution* with the help of the Settlement/Land Acquisition Grant (SLAG) and the Land Redistribution for Agricultural Development Programme (LRAD) to provide the poor with access to land, and thirdly land *tenure reform* with the aim of securing tenure, resolving issues and providing alternatives for tenants (Schlemmer, 2001: 76; Bosman, 2007: 5-6; De Villiers, 2003: 49-52). This project excludes this third objective, but will refer to it where appropriate.

The Restitution of Land Rights Act (Act 22 of 1994) is the first law that was passed by the ANC-led government to address the land question (Mason, 2004: 8). This law stipulates the details of the procedure to claim land or comparable redress by those who have been dispossessed by racially discriminatory laws after 19 June 1913 which is the date of the promulgation of the Natives Land Act (Act 27 of 1913). For this process provision is made for institutions to administer and regulate the process, namely the Land Claims Court (LCC), the Land Claims Commissioner and the Commission on Restitution of Land Rights (CRLR) (Schlemmer, 2001: 76 and De Villiers, 2003: 51).

All claims for restitution had to be lodged to the Commission by 31 December 1998, but the deadline was later extended to 2008. According to the Commission, 76 969 claims were received by 1998 of which approximately 80 per cent were claims on urban land and included almost 300 000 people, and about 20 per cent of the claims were on rural land and included about 3.6 million people (Bosman, 2007: 6 and Schlemmer, 2001: 81).

The Department of Land Affairs aimed to settle all the claims for restitution by 31 March 2008, but by the end of 2007 there were an outstanding number of 5000 claims (De Waal, 2007c: 20). This deadline has already expired and the process has not yet been completed. The head Land Claims Commissioner at the time, Mr. Tozi Gwanya, however have said that even though all the claims will not be finalised in time, the restitution process will continue with 'new rules' (Stoltz, 2007: 69 -70).

There is fear under current land owners that the 'new rules' to which Mr. Gwanya refers, might be a renewed expedient focus on the expropriation of land in an attempt to speed up the process of land restitution and redistribution. The initial goal of the government was to place 30 per cent of all arable land in the hands of blacks by 1999, but due to very slow progress the target date has been extended to 2014 (Bosman, 2007: 6). The Expropriation Act (Act 63 of 1975) has prevented the government to use its expropriation rights for the purposes of land redistribution and the first farm to be expropriated for restitution was only done in February 2007. However, in April 2008 a draft Expropriation Bill was tabled in parliament in an attempt to widen the scope of expropriation so that it will include expropriation for the purposes of land reform as well and that compensation will not necessarily be calculated according to market value.

AgriSA, the Democratic Alliance (DA), estate agents and the FW De Klerk Foundation are all willing to challenge the Bill in the Constitutional Court since they believe the Bill is not constitutional and provides a serious threat to private property rights. On the other hand, the University of the Western Cape's Programme for Land and Agrarian Studies (Plaas) holds firm that the Bill is not controversial and owners whose land will be expropriated will still be able to object to compensation and appeal to the court (Groenewald, 2008; "Draft Bill", 2008).

1.1.2 NAMIBIA

The misrepresentation of race in the landownership pattern of Namibia is a direct consequence of the German colonisation and South African administration that established a system of discriminatory land access in Namibia from 1884 until late in the twentieth century. Land was expropriated from the indigenous black people, who were later confined to tribally based 'native reserves' established by the South African administration, and appropriated to the white colonists (Werner, 2001: 2). In 1990 at the time of independence the new Namibian government inherited a highly skewed distribution of land where 52 per cent of all agricultural farmland were in the ownership of the 6 per cent of the total population that was white and 48 per cent of the agricultural farmland were in the ownership of the 94 per cent of the population that was black (Hunter, 2004: 1).

The land that was colonised and to which blacks were denied access, are mostly marginal agricultural land in the Police Zone, which is the area south of the Red Line and used for extensive livestock farming. No land alienation north of this area took place since the Ovambo tribe living there could not be subjugated by the German colonists (Werner, 2001: 2 and Kaura, 2001: 34). The land south of the Red Line historically belonged to the pastoralist Herero, Damara and Nama and it is thus only these people that were directly affected by the colonial land-grabbing (Breytenbach, 2004: 50; Hunter, 2004: 3). Although Namibia has an abundance of land, the dry climate, especially in the south, contributes to the very little agricultural value it has. It is therefore that large pieces of land in the south were dispossessed from blacks in order for the new white owners to establish big livestock farms and game ranches (De Villiers, 2003: 32).

The national liberation struggle culminated in a peaceful transition of a negotiated settlement and independence in 1990 (Hunter, 2004: 2). Throughout the struggle land-related issues were perceived to be a central driving force and contributed to the political symbolism of redressing the racial injustices done and giving back the power to the people (Sachikonye, 2004: 66). Initially the SWAPO-led (South West Africa People's Organisation) government was committed to a programme of land reform in an attempt to

redress the imbalances created by policies of land allocation on a racial basis, yet progress on redistributing land and changing the land ownership pattern is criticised for being too slow. Also, since the power base of this party is in the Ovambo area where no land was dispossessed, there is little apparent political will to vigorously pursue the policy on land reform (Kaura, 2001: 34 and Werner, 2001: 5).

Namibia committed itself to a redistributive land reform programme in 1990 which would be implemented through three strategies: 1) redistribution; 2) the Affirmative Action Loan Scheme; and 3) the development of resettlement projects in communal areas (Hunter, 2004: 3). The National Conference on Land Reform and the Land Question, the only of its sort in the region, was held by the government in 1991 only one year after independence as a consultative process to formulate policy and to achieve a national consensus on the land question (Breytenbach, 2004: 55 and Werner, 2001: 5). Here it was concluded that ancestral restitution land claims would be too complex to redress and thus it was rendered 'impossible' (De Villiers, 2003: 33). Furthermore, the consensus resolution determined that land was to be distributed to all historically disadvantaged people and not just the landless. Also, foreigners and absentee landlords would not be allowed freehold land and their land would be first in consideration for expropriation (Hunter, 2004: 3).

After the land conference the momentum and political will with which the land reform programme was pursued, subsided. Only in 1995 did the government pass the Agricultural (Commercial) Land Reform Act (Act 6 of 1995) under Article 16 of the constitution of the Republic of Namibia. Article 16 of the constitution provides the state with the authority to expropriate property on the conditions that it is in the public interest, with just compensation and according to the requirements determined by the Agricultural (Commercial) Land Reform Act (Act 6 of 1995). This act classifies land that is appropriate for expropriation as land that is under-utilised, excessive to the owner, owned by foreign nationals and in the case where the willing seller-willing buyer negotiation failed (Breytenbach, 2004: 55 and Treeger, 2004: 2). Namibia's land reform process – unlike Zimbabwe's since 2000 – is thus backed by law and a legal framework fair to all.

The Land Reform Advisory Committee was set up as an outflow of this act with the purpose to continue work on the formulation of a land reform policy. The National Land Policy was only passed in 1998.

The aim of the redistributive land reform programme is to provide more equitable access to productive land and improved living conditions to those in need of it (Werner, 2004b: 20). Only freehold land will be used for redistribution purposes on the basis of the willing buyer-willing seller negotiation or alternatively expropriation with market related compensation, although this method has not yet been used. An indication of the slow progress that has been made with acquiring land and redistributing it, as indicated by the Namibian Institute for Public Policy Research, is that in 1999 the government acquired only four farms of the 142 farms offered for sale and in 2000 only 15 out of 125 farms were acquired by the state. Overall, this amounts to approximately 7.4 per cent of commercial farmland to which 34 000 people have been given access to at a cost of N\$20 million per year. The allocated budget will however be increased to N\$100 million per year in an attempt to speed up the process (De Villiers, 2003: 35-40). On 3 November 2008, one Namibian Dollar exchanged for 0, 94404 South African rand.

Tenure reform in non-freehold or communal areas do not receive much attention yet. Since the government aims to improve access to opportunities of self-sufficiency and to alleviate pressure in the communal areas some measures are taken to address these issues. In the communal areas a system of customary land tenure or rights of leasehold persisted under the authority of traditional leaders. In an attempt to improve security of tenure and to make unused communal land available for the promotion of agricultural developments, the government requires under The Communal Land Reform Act (Act 5 of 2002) the registration of all land rights in communal areas. Provision is also made for the inheritance of customary allocations through the Traditional Authority. Ultimately the aim is to reduce the areas of jurisdiction of traditional authorities by bringing customary land under the control of the state (Werner, 2004a: 108-111).

As part of the legacy of the land dispossession blacks were left with little other alternative than subsistence farming in the communal areas and were forced into wage labour on the commercial farms of the white settlers. Agriculture is also the largest employer in Namibia with the majority of poor households living in rural areas. Understandably land and employment are interdependent issues that government is trying to address (Sachikonye, 2004: 66; Werner, 2001: 1-3; Werner, 2004b: 22; Hunter, 2004: 2).

The Affirmative Action Loan Scheme was implemented in 1992 as a support strategy by the government and the Agricultural Bank of Namibia (AgriBank) to subsidise new formerly disadvantaged farmers to purchase commercial farmland. In the period of 1999 – 2001 three times more land was purchased or transferred to blacks under the AA Loan Scheme than with the government resettlement programme (Sherbourne, 2004a: 8-16). Another ambiguity is that although land reform is seen as a precondition for rural development and poverty alleviation, there is no link between the Land Reform Policy and the Poverty Reduction Strategy for Namibia or the 2001-2005 National Poverty Reduction Action (Sachikonye, 2004: 74).

1.2 PURPOSE AND SIGNIFICANCE OF THE STUDY

The primary purpose of this study is to describe and systematically compare the land reform programmes of South Africa and Namibia. The political backgrounds of the countries, the policy formulation processes, the manner in which the policies are implemented as well as the progress of the process are investigated. This discussion ultimately provides a provisional assessment on land restitution and land redistribution from a comparative perspective.

The aim of this project is to examine the land reform policies of the respective countries in terms of their successes and failures and to consider the social and economic impact of these outcomes. Again, the situations in the two countries are comparatively analysed.

Research questions raised on this theme are:

- What was the structure pertaining to land rights and ownership during the colonisation period?
- What are the reasons behind the pursuit of the land reform policy?
- How has the new government, after the liberation struggle, formulated the land reform policy?
- What are the main impediments to the successful and speedy delivery of the land reform programme?
- What are the social, environmental, political and economic issues that arise from the land reform policy?

It is the objective of this study to conduct an in-depth examination of the land reform policies of restitution and redistribution of South African and Namibia. Post-redistribution development policies are alluded to but not analysed systematically. This study will be concluded with an assessment of the relative policies in a description of the similarities and differences between the two areas. The trends and processes will be compared and suggestions will be made to improve upon the land reform programmes. Issues for further research will also be determined.

1.3 RESEARCH METHODS

The research methods applied for this study is qualitative analysis of existing information and literature on the subject. It is a comparative study where the similarities and differences between the two groups or units of analysis are highlighted. The units of analysis, that which the researcher examines, are the two countries South Africa and Namibia and their respective land reform policies.

Only secondary current textual material will be used as the source of information to conduct a comparative analysis. No questionnaires or other empirical surveys will be designed for data capturing. The types of texts include books, magazine articles, journals, government publications and internet information all on the subject of the research question.

Note: For Namibia the terminology “article” will be used for the constitution and “section” for ordinary legislation. In South Africa’s case, “section” is used for both the Constitutions of 1993 and 1996, as well as legislation.

1.4 CONCEPTUALISATION

1.4.1 LAND REFORM IN SOUTH AFRICA

In South Africa the Land Reform Programme is an integrated programme that consists of three main components, namely restitution, redistribution and tenure reform.

1.4.1.1 LAND RESTITUTION

South Africa has decided to embark on a land restitution programme to redress those people who have been dispossessed of land and rights in land under racially discriminatory laws and legislation since 19 June 1913 (which is the date of the promulgation of the Native Land Act of 1913). This programme involves the returning of the actual land lost, financial compensation, or the provision of alternative land to claimants who were dispossessed. Part of the aim of this programme is to support the vital process of reconciliation, reconstruction and development.

1.4.1.2 LAND REDISTRIBUTION

The land redistribution programme aims to make it possible for the poor and disadvantaged people of South Africa to buy and access urban and rural land for residential and productive purposes in order to improve their livelihoods. Also, the programme intends to increase black ownership of agricultural land and focuses on the rural poor, farm workers, labour tenants and emerging black farmers as potential beneficiaries. Sub-programmes that exist to support the successful implementation of redistribution entail financial grant schemes or subsidies, training and skills development, land use planning and extension services. Government has the right to confiscate or expropriate property, with the payment of compensation, if it is for the purposes of land redistribution.

1.4.1.3 LAND TENURE REFORM

This aspect of the land reform programme is generally the most complex. In South Africa it has thus far been the most neglected. Land tenure refers to terms and conditions of lease hold, communal land ownership and any type of land holding that is insecure. The aim of the land tenure reform programme is to convert tenancy rights into formal agreements, with focus on farm workers, women and the traditional systems prevailing in the homelands. It is not within the parameters of this study to describe and analyse land tenure reform in any detail.

1.4.2. LAND REFORM IN NAMIBIA

1.4.2.1 LAND REDISTRIBUTION

The aim of land redistribution in Namibia is to reallocate land to all historically disadvantaged persons with the intention of promoting ownership of farmland by the disadvantaged. The government has the right to expropriate land, with the payment of compensation, for the purpose of redistribution on the basis of provisional criteria.

1.4.2.2 DEVELOPMENT OF RESETTLEMENT PROGRAMMES IN COMMUNAL AREAS

Communal areas are to be retained, developed and expanded in unison with the protection and enhancement of land and tenure rights of the poor communities who reside in the communal areas. The intention is to improve the standard of living of the previously disadvantaged by providing them with access to land with secure tenure.

CHAPTER II

LAND REFORM IN SOUTH AFRICA

2.1 A HISTORY OF DISPOSSESSION

2.1.1 THE COLONIAL LEGACY

South Africa's complex history of conflict over rights to land, access to land and the distribution of land dates back to 1652 when the first white settlers arrived at the Cape of Good Hope (De Beer, 2006: 24). For the following period of 300 years the European colonists extended their reach and annexed land to the northern and the eastern corners of the country (Lahiff, 2007b: 1578). The indigenous people were systematically deprived of the land they rightfully occupied and by 1913 when the Natives Land Act (Act 27 of 1913) was promulgated Africans could lawfully occupy only seven per cent of the land in the country (Freund, 1998: 154; Hall and Ntsebeza, 2007: 3; Walker, 2002: 7).

Several historical events contributed to the highly skewed and racially based land ownership pattern that is still prevalent today. During the first part of the 19th century the demographic structure of South Africa and the settlement patterns of the indigenous people changed as a result of Difaqane (the Zulu for forced migration). A chain reaction of intense large-scale inter-tribal warfare between 1816 and the 1830's was initiated by Shaka from the Zulu Kingdom in the eastern part of the country, today known as KwaZulu/Natal. Droughts may also have created population pressure impacting on Shaka's activities. As a consequence of this forced migration that the indigenous tribes undertook, much of the interior of the country was depopulated. According to De Beer (2006: 25-26) this was during the period of indigenous, British and Boer state formation and created opportunity for the northern migrating Afrikaner Voortrekkers and imperialist British Colonial Governments to further their expansion and annexation of territory north of the Orange, Tugela and Vaal Rivers.

It was during this period that the white settlers became the occupiers and owners of vast areas of land through negotiations, treaties and other frontier wars with the indigenous black people. They also developed relations of domination and subjugation over the

black people who continued to work on the newly established white farms through a tenure system which provided for cash tenancy, labour tenancy and sharecropping. Diamond mining at Kimberley expanded from 1867 and gold mining developed in the Transvaal in 1886 (Freund, 1998: 87-88). It impacted greatly on the economic and political situation of the time. A demand for cheap mine labour emerged and was answered with the abundance of available African labourers who were forced into wage and migrant labour by legislation such as the notorious Glen Grey Act of 1894 (Hall and Ntsebeza, 2007: 3; Mason, 2004: 43; De Beer, 2006: 26; Chigara, 2004: 20-21).

Control over the wealth of the mining industries on the Witwatersrand became a point of dispute and rising tensions between the Transvaal Boer Republic and the British who dominated these economic activities. In 1899 the Anglo-Boer War or the South African War broke out and the British were victorious (Mason, 2004: 44). Soon after, the Union of South Africa was established in 1910 and henceforth the control of land, with the exception of the British protectorates, would be in white hands to entrench the territorial segregation already established during the colonisation period. The first racially-based legislation and government policy instituted after 1910 was the Natives Land Act (Act 27 of 1913) which is considered to be the cornerstone of racially discriminatory land ownership patterns in South Africa. This date is also the date after which restitution claims in rural South Africa would be valid since the restitution policies were proclaimed in the 1990's. A provision of the Glen Grey Act of 1894 is also incorporated in this Act and forbade Africans to buy or own land outside the seven per cent land that was reserved for them. Sharecropping and labour tenancies were abolished and effectively caused the demise of black peasantry in South Africa (Freund, 1998: 154; Hall and Ntsebeza, 2007: 3).

The aim of the Natives Land Act (Act 27 of 1913) was to establish territorial segregation between white and black South Africans. This Act set 9.1 hectares of land, as determined by the Glen Grey Act of 1894 and some more freehold land, aside for the exclusive use of blacks only. Known as the Scheduled areas, this land constituted the reserves where blacks could own land but it was not nearly enough for the size of the black population.

The same applied to homeland policies since the fifties. Blacks could not own or access land outside the reserves unless they worked as wage labourers on white farms (De Beer, 2006: 26).

Agriculture was not the most dominant sector in the economy at the time and the majority of farmers, who were white, demanded assistance from the state. Various support measures were implemented by the state to further the interests of and consolidate the power of white farmers in agriculture. This was to the detriment of many black farm workers who were exploited by minimal wages and black farmers in the reserves who had to make a living in over populated and poverty stricken areas without the state subsidies and protectionist policies that the white farmers enjoyed (Greenberg, 2003a: 97 – 98).

It was recognised that the land allocated for black settlement was insufficient and in an attempt to expand the areas the Natives' Trust and Land Act (Act 18 of 1936) identified additional land to be added to the 'Scheduled areas'. Black squatters and labour tenants on white farms were converted into wage labourers and had to be registered by white farmers or else they would be evicted from the farms and relocated to the reserves. This was a measure to control and restrict the movement of blacks in areas other than the reserves (De Beer, 2006: 26-27). In 1936 approximately 1 million African labour tenants resided on white farms but this declined to a mere 16 000 labour tenants in 1973. Influx control policies into white urban areas were also put in place through the Native (Urban) Areas Act (Act 21 of 1923) and the Bantu (Urban Areas) Act (Act 25 of 1945) and laid the foundation for the 'pass laws' system for urban Africans. Existing land ownership and occupation patterns were consequently preserved as they were because these Acts excluded Africans from any land holding outside the reserves (Tong, 2002: 52-53).

2.1.2 APARTHEID POLICIES

In the 1948 election the Afrikaner nationalist party, the National Party (NP), came into power with promises for the promotion of apartheid or 'separate development' policies. It is under this segregationist and white supremacist government that racially

discriminatory legislation was further promoted to establish the highly skewed imbalances of economic prosperity and political power between white and black South Africans (Fraser, 2007: 839-840).

The apartheid-era South African government increasingly reserved land for white farmers and created a large-scale white commercial agricultural sector through state subsidies to these farmers while blacks were forcefully removed to the confined reserve and homeland areas where they were subject to conditions of overcrowding, poverty and insecure tenure.

In 1950 the Group Areas Act was passed – aiming primarily at coloureds and Indians in urban areas. It legally defined the highly unequal and separate residential areas for the four population groups: whites, Indians, coloureds and Natives (Africans). Whites, who comprised the minority of the total population (about 13 per cent) had access to 87 per cent of the country's land versus the blacks, who comprise the majority of the total population, had access to a mere 13 per cent of land. Each ethnic group's political rights were confined to their specific area and consequently non-whites could not lawfully own or reside on land outside of these reserves. Not all blacks however resided in the reserves and still had rights to and lived on freehold properties in areas that were now allocated to whites. The government expropriated this land (some compensation were paid), known as 'black spots', and relocated the black occupants to the reserves. By the end of 1983 247 'black spot' farms were removed and approximately 475 000 people were relocated (Walker, 2007: 137).

Many blacks and their families were still residing on white farms as labour tenants. The government passed the Law on the Prevention of Illegal Squatting (Act 52 of 1951) and the Bantu Laws Amendment Act (Act 42 of 1964) as further measurements to convert labour tenants into wage labourers and to abolish illegal squatting (De Beer, 2006: 27). These laws and policies contributed to the confinement of blacks to their homelands as they were prevented to move or reside freely around the country. It is approximated that 3.5 million people were relocated to the reserves under the extensive legislation of forced

removals (Walker, 2005: 807). Blacks were restricted to a specific territorial area where they had only limited opportunity to economic development and they were prohibited in sharing the natural resources of South Africa equally.

Fraser (2007: 839-840) contends that the apartheid-era South African government created a 'bifurcated state' through the creation of the homeland areas and the appointment of the traditional authorities (in terms of legislation passed in the 1920's) in these areas to administer rights in land, labour and the use of resources. Legislation that provided for black self-government in the reserves are the Bantu Authorities Act of 1951 and the Bantu Self-Government Act of 1959. The sovereignty of these traditional leaders within their 'invented' domains was limited as they were still subordinate to the apartheid state, but their degree of accountability to the people was also limited. Traditional authorities were frequently corrupt and abused their powers of allocating land by imposing illegal taxes to the detriment of the black residents (Ntsebeza, 2007b: 34). This attributes to insecurity of tenure in the communal areas of the homelands.

2.1.3 NEGOTIATING FOR A LAND REFORM POLICY

The final years of the apartheid government were characterised by the increasing international pressure on South Africa to democratise politically, but also the changing economic climate demanded a shift towards neo-liberal capitalism, market-orientated strategies and minimal interference from the state (Ntsebeza, 2007b: 34-35; Lahiff, 2007b: 1578). During the time of the negotiations for a peaceful transition to democracy the land question surfaced as an important point of contention. Land was seen as a central issue to be redressed because it was through the consistent deprivation of black peoples' rights in access to land and the inequitable distribution thereof that whites enjoyed economic and political privilege.

The three main negotiating parties in the transition were the liberationist party, the African National Congress (ANC), the apartheid NP government and non-governmental organisations concerned with the land issue. Throughout the period of 1990 to just before the first democratic elections in 1994, these parties had to promote their interests

to be incorporated in the Interim Constitution (Act 200 of 1993) as the final terms of the transition arrangement. Contrasting issues of principles between the negotiating parties concerned the protection of existing property rights and the method of land acquisition for land redistribution (Walker, 2005: 811-816). It is between these issues that consensus had to be reached.

Contributions of the De Klerk government towards the transition to a democratic dispensation in South Africa are very significant and enabled the overall political reform to become a reality. In 1990 political prisoners were released and liberation movements (including the ANC) were unbanned. One of the first steps the De Klerk government took to start the process of restitution in a wider policy of land reform, were to pass the Abolition of Racially Based Land Measures Act (Act 108 of 1991). Under this Act, the racially discriminatory acts of 1913 and 1936, as well as the Group Areas Act of 1966 that caused the imbalance of land distribution and accrued 102 million hectares of land to 55000 commercial white farmers versus the 17 million hectares of land for the homelands to which 11.2 million black households were restricted, were repealed (De Villiers, 2003: 47; Sihlongonyane, 2005: 146). For a start, the obstacle of a racially discriminatory legislative framework was destructed to provide for the accommodation of new democratic laws and legislation that would be based on the constitutional right of equality for all.

Initially the land issue was central to the liberation struggle of the ANC because of the gross inequities of land rights and painful memories of forced removals, but during the negotiation process the ANC had to make certain concessions and consequently shifted its focus to ensuring a decisive economic transformation and the restructuring of society (Bosman, 2007: 4 and Walker, 2005: 812). The ANC advocated for expropriation of land and non-market mechanisms in its policy statement of 1992, *Ready to Govern* and prioritised a policy of land restitution above one of land reform (Lahiff, 2007b: 1580). However, the party gradually adopted more neo-liberalist economic policies and would finally accept the concept of the willing buyer – willing seller (with compensation) land acquisition method for redistribution. Today there is a property clause in the constitution.

Assistance from the World Bank to the ANC in the formulation of a land reform scheme was very significant since the ANC entered the transition without an analysis of the agrarian questions of agricultural restructuring that would go hand-in-hand with land redistribution and its impact on agricultural production (De Villiers, 2003: 47-48; Palmer, 1997: 215 – 216). The World Bank released its 'Options for Land Reform and Rural Restructuring' late in the negotiating period in 1993 (Walker, 2005: 815; Ngqangweni, 2004: 137). Presented in this proposal was a grant-driven programme for redistribution in which the state would promote small farmers to acquire agricultural land through a willing buyer – willing seller mechanism. It was calculated that the target of transferring 30 per cent of agricultural land to blacks in five years' time, would cost the state R 17.5 billion.

Participation from land-based non-governmental organisations in the process of policy formulation and research on the demands of the landless cannot be overlooked. Their position towards the final policy as well as their relationship with the various government departments responsible for land reform has undergone some changes over time. The emergence of land rights NGO's can be attributed to the struggle against forced removals of the late 1970's and early 1980's taking place under the relevant apartheid legislation and racist laws (Eveleth & Mngxitama, 2003: 160-161). A cluster of NGO's formed the National Land Committee (NLC) which joined the land reform debates of the early 1990's. Rural communities of landless and very poor people found a voice through the NGO's to represent them in their recommendations to the DLA during the policy formulation period. Most notably, the NGO's emphasised the particular issues and grievances pertaining to forced removals, and the insecure rights of labour tenants and farm workers (Weideman, 2004: 227-228).

A new phase of the land restitution process was introduced when the Interim Constitution (Act 200 of 1993), a transition measure leading to the final constitution adopted in 1996, recognised the right to have land restored as a constitutional right (De Villiers, 2003: 47; Ntsebeza, 2007a: 117). The principle of land restitution was thus established in the 1993 constitution as well as in the 'equality clause' of the Bill of Rights where the principle of

equality of all before the law is specified (De Beer, 2006: 27; Walker, 2005: 815). For the purposes of land restitution, an institutional framework was put in place and made provision for a Commission on the Restitution of Land Rights (CRLR) to process the claims and a Land Claims Court to make the final adjudication. It was also decided that restitution claims for land dispossessed before 19 June 1913 (the date of promulgation of the Natives Land Act of 1913) would not be considered.

High on the priority list of the NP was the protection of existing property rights. Opinion within the ANC considered this to be an impediment to land restitution, but negotiations between the parties would culminate in the agreement that both private property and restitution could be constitutional rights and do not have to exclude the other. A 'property clause' was included in the interim constitution and makes no direct reference to land reform. Clause 28 of Act 200 protects existing property rights, but also makes provision for land expropriation. Expropriation is lawful for 'public purposes' and is subject to the payment of 'just and equitable' compensation which, among considerations of the future use of the property, the history of its acquisition and the interest of those affected, can be but does not have to be related to market-value (Walker, 2005: 814-815).

When the ANC launched the Reconstruction and Development Programme (RDP), its election manifesto in 1994, the "need to integrate growth, development, reconstruction and redistribution instead of treating them as processes that contradicted one another" (Walker, 2002 as cited in Ngqangweni, 2004: 136) was emphasised. This was a fundamental change to the Freedom Charter (1955) in which the ANC advocated for the nationalisation of land (Ntsebeza, 2007a: 126). Evidently, the strong communist influence in the ANC had to succumb to the international climate that favoured pro-capitalist and neo-liberalist forces. Although the RDP did not mention the willing buyer – willing seller approach, it established the objective of redistributing 30 per cent of all agricultural land to blacks in a period of five years (Bosman, 2007: 9; Lahiff, 2007b: 1580). Then came the first democratic elections in 1994 which the ANC won.

2.2 DEMOCRATIC SOUTH AFRICA: LAND REFORM SINCE 1994

A new Department of Land Affairs was established in November 1994. The five functions of the department were to co-ordinate policy and programme implementation on the restitution of land rights, the redistribution of land, land tenure reform, land administration reform, and support to people settling on land (SAIRR, 1996: 363).

The final Constitution (Act 108 of 1996) did not change the fundamental principles of land reform as they were defined in the interim constitution. However it broadened the constitutional commitment to land reform. According to Walker (2005b: 815-816) the 1996 constitution specifies that tenure security is a constitutional entitlement and the state should 'foster conditions which enable citizens to gain access to land on an equitable basis'. Although it prohibits the 'arbitrary deprivation of property', the state is explicitly empowered to expropriate land 'in the public interest'. This constitutional imperative indicates a more extensive land reform than indicated in 1993 since 'the nation's commitment to land reform' is included in the definition of 'public interest'.

Section 25 of the constitution includes the clause which provides for the protection of private property and says that no-one can be deprived of this property, except in terms of the general law (Bosman, 2007: 4). Historical inequalities in land distribution are also addressed in Section 25 (5), (6) and (7), in which it is stated:

- The state must make reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to obtain access to land on an equitable basis.
- A person or a community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
- A person or a community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

This is the constitutional background against which the government's land reform policy has been formulated.

In 1996 the ANC adopted extremely conservative macro-economic policies under the GEAR (growth, employment and redistribution) programme. The market mechanism of willing buyer – willing seller to acquire land was thus entrenched in the land reform policy (Hall & Ntsebeza, 2007: 13). GEAR, as a neo-liberalist programme, promotes a limited role for the state in the economy and consequently does not support abundant social spending (Hall, 2004: 220). In this context and possibly because the government lacks the political will to vigorously pursue land reform, before 2005 the DLA has never received more than 0.5 per cent of the national budget (Cousins, 2007: 223). Budgeted expenditures became surpluses.

The White Paper on the South African Land Policy of 1997 confirms the principle of willing buyer – willing seller as the mechanism through which the state will acquire land for redistribution (Hall, 2007: 88; Bosman, 2007: 10). As provided for in the 1996 constitution, the 1997 White Paper sets out the land reform policy programme with three legs (Sibanda, 2001: 2), which are land restitution, land redistribution and land tenure reform. It also indicates that the Land Policy must deliver (Marco-Thyse, 2006: 34) on the following:

- to redress the injustices of apartheid;
- to foster national reconciliation and stability;
- to underpin economic growth; and
- to improve household welfare and alleviate poverty

A number of financial grants to facilitate the land reform programme were set out in the white paper (SAIRR, 1998: 323):

- the settlement/land acquisition grant;
- the grant for the acquisition of land for municipal commonage;
- the settlement planning grant; and
- the grant for determining land development objectives.

South Africa's land reform programme has three focus areas of restitution, redistribution and tenure reform. The developmental aspects (example infrastructure, extension services, financing and marketing) were often inadequate. In this research project land tenure reform as well as agricultural development will not be discussed in detail, but the following sections will focus on the other two respective policies up to date.

2.2.1 LAND RESTITUTION

The first piece of 'transformation' legislation to be passed by the new parliament of the democratic South Africa was the Restitution of Land Rights Act in November 1994 (Walker, 2005: 817). Those whose land was taken from them during apartheid – specifically since 1913 – have the right to claim the restoration or return of that land, or financial compensation could be accepted. The process is a claims-driven one where claims have to be lodged to the Commission on Restitution of Land Rights and a Land Claims Court is established to deal with any disputes or complexities that might arise. Restitution claims have to be on land that was expropriated after 19 June 1913 (the date of promulgation of the Natives Land Act of 1913) or in cases where forced removals took place (Bosman, 2007: 5).

Chapter III of the Restitution of Land Rights Act (Act 22 of 1994) determines the provisions for the Land Claims Court (LCC). This court has equivalent powers of a Supreme Court and the government cannot interfere with its workings. Any appeals on a ruling will be referred to the Constitutional Court. The LCC has a President of the Court and additional judges are appointed through consultation with the President of the Republic. Restitution claims are legally against the State and not the land owners. Functions of the court include the determination of the right to restitution and approving or determining compensation and whether it is just and equitable. All claims that cannot be successfully mediated by the CRLR, or unresolved disputes between current land owners and claimants will be referred to this court (South African Communication Service, 1996: 357). Other requirements of this court are that it must be accessible to the poor and illiterate, all cases must be handled as a matter of urgency and the constitutional rights to restitution must be guaranteed.

The deadline for all restitution claims to be lodged, was 1998. All claims had to be finalised by 2005 as determined by the DLA. This date was extended to 31 March 2008, but even this second deadline has not been reached (Bosman, 2007: 6). By the end of June 2008, about 5 000 claims were still outstanding. Land claims commissioner Chief Blessing Mphela, the Business Report writes, says that the outstanding land claims should be concluded by 2012 ("Land claim cases", 2008). The CRLR conducted a survey in 1998 which indicated that the overwhelming majority of those who took part in the survey would choose, if they had the choice, financial compensation over and above the return of land for a restitution claim (Walker, 2005: 810).

Approximately 3.5 million people, as estimated by the Department of Land Affairs, lost their land and property rights through forced removals. Between 150 000 to 200 000 households were affected by the Group Areas Act, yet only approximately 63 000 urban claims were lodged by 2006 (Walker, 2007: 137). These victims of racially discriminatory legislation also have the right to restitution of the mostly urban land from which they were forcefully removed. Although government cannot always return the urban land under claim, because much of this land is well-located and consequently it is not financially feasible for government to purchase it, the other options of restitution include participation in housing schemes on alternative land and also payment of financial compensation (SAIRR, 1996: 323, 364-368). A report by the Centre for Development and Enterprise (CDE, 2005) stated that there is a much higher demand for urban housing than for commercial farmland.

Statistics indicate that the amount of claims for urban land is much higher than the amount of claims for rural land (SAIRR, 2007: 383). By the end of March 2006 a number of 71 645 (90 per cent) claims from the total of 79 696 claims lodged, were settled. From the 71 645 finalised settlements, there were 8 609 (11 per cent) rural claims of which 51 per cent were settled with land transferral. The other 89 per cent (63 576 claims) of the total amount of settled claims, were urban claims. Of the urban claims, 72 per cent of the settlements were concluded with financial compensation. There were 8 051 outstanding restitution claims in March 2006 of which 87 per cent were rural and 13

per cent were urban. Generally, one rural claim involves many more beneficiaries than an urban claim; also the area of land under claim is much larger for rural claims. This is the reason for the restitution process's little contribution to the redistribution process in terms of the volume of land transferred to the previously disadvantaged.

Severe management and resource problems have been rife in the CRLR, the LCC and the DLA. Due to these inadequacies progress of the settlement of land restitution claims have been very slow. In 1999 some 63 500 claims forms were reported as lodged, of which only 41 had been processed to finality. To some extent the process was speeded up when a shift was made to a more administrative route for settling uncontested claims. By March 2005, a total of 57 908 claims were reported as settled which contributed to the 73 per cent of the 79 696 claims reported as lodged with the CRLR. Approximately 850 000 hectares of land had been transferred to claimants, but this is only one per cent of commercial farm land and falls far short of the goal of 30 per cent (Walker, 2005: 817-818). By 2008, over 93 per cent of claims were settled, which translates into a number of 74 808 claims being settled from a total of over 79 696 claims lodged.

A technical change in the administrative process of expropriation contributed to speeding up the process. This was facilitated through the amendment in 2004 to The Restitution of Land Rights Act (Act 22 of 1994). In the amendment a clause gives the minister of land affairs and agriculture powers to expropriate, acquire, or purchase land under claim without a court order and without the consent of affected parties if such action facilitates the restitution process (SAIRR, 2007: 421). This measure intends to facilitate a more speedy land restitution process because now a land claim does not have to go through the extensive and legalised procedures of the Land Claims Court but can be settled through this shortened administrative procedure. Ms Lulu Xingwana, the minister of land affairs and agriculture, announced in 2006 that a period of six months would be allowed for negotiating a selling price of land which has been claimed through restitution. After this period, the land would be expropriated. This was decided in an attempt to speed up the lagging process of land transferrals before the deadline of 2008 (SAIRR, 2007: 421-422).

The first expropriation of privately owned land was in June 2005. According to the South African Institute of Race Relations (SAIRR, 2006: 444) a farmer of the North-West received a land expropriation notice in October 2005. This was the outcome after price negotiations with the farmer had reached a deadlock after eight months. Initially the farmer wanted R6 million but lowered his price to R3 million, however state-appointed evaluators gave his farm a maximum value of R1.7 million. On recommendation of the regional land claims commissioner, the minister of land affairs and agriculture ordered, within the stipulation of her powers according to The Restitution of Land Rights Amendment Act of 2004, the expropriation of the property in question. This event was met with different attitudes ranging from approval from land activists to an intensified concern from farmers' unions that this would be the start of state-sanctioned land grabs.

The second farmland that was expropriated by the government is the farm Callais 226KT which used to be an export-producing citrus farm in the Limpopo province ("State to take", 2008; Stoltz, 2008: 61). The Letebele, Mpuru and Maraba communities were dispossessed of their land rights in 1965 and consequently lodged a restitution claim on this farm (Masinga and Hammond, 2008: 7). In 2004 the liquidators, Sechaba Trust, accepted the state's offer of R13 361 000 in a voluntary sale transaction. With the prospects of selling the farm, no further development was undertaken on the farm and it thus became bankrupt. However, no further communication was received from the Land Claims Commissioner and the process stalled ("Die uitdaging", 2008: 57).

An auction was organised to sell the farm Callais, but the LCC intervened in the process with an interdict because the farm was to be expropriated (Stoltz, 2008: 61). Sechaba Trust demanded R19 million as compensation, considering the increases in land prices since 2004, but the expropriation settlement was determined to still be R13 361 000 as negotiated previously ("Die uitdaging", 2008: 57). In January 2008 the amount of R 10.68 million (80 per cent of the total settlement) were paid to Sechaba Trust as part of the settlement. Callais is to be handed over first to the interim caretaker Strategic Farm Management (SFM) who will manage the orchard on a fifty-fifty profit sharing

arrangement with the community. Thereafter the 310 households (1 860 beneficiaries) will continue the citrus farming themselves (Masinga and Hammond, 2008: 7).

Up to date only a hand full of restitution claims have been finalised through the government's use of its right to expropriate the property. Also, financial compensation was paid for the land that was expropriated. Whether the expropriation settlement amount was determined according to the provisions and the list of considerations in section 25 of the constitution, is another matter. An amendment bill to the Expropriation Act (Act 63 of 1975) that was tabled in parliament in June 2008 proposed to assign executive powers to the Minister of Agriculture and Land Affairs to determine the compensation amount in the case of expropriation (Steenkamp, 2008: 2; Duvenhage, 2008: 1). Also, any objections voiced by land owners will be dealt with by the LCC on an urgent basis.

Objections against expropriation negotiations will not be heard against the price of expropriation, but will only be considered against the procedure that was followed to determine the price. This will be the new role of the LCC: to approve or disapprove the procedure followed by the executive authority to determine the amount and manner of compensation for the expropriation of property. In terms of section 25 the court has to consider 'all relevant circumstances', whether it is just and equitable, and also the list of considerations in the constitution when a ruling is made (Rabkin, 2008). Market-value is only one of the considerations and according to sections 36(1) and 25(8) of the constitution legislation may limit the rights of the land owner if it prohibits the state to redress the consequences of racial discrimination (Marais, 2008: 23).

Many objections and voices of concern have been heard in reaction to this proposed amendment to the Expropriation Act (Act 63 of 1975). Mostly the objections are concerned about the constitutionality of the legislation and whether it breaches the constitutional right to private property as well as market-related compensation for expropriated property. This change in legislation seems to be a step taken by government to speed up the lagging land reform process and its review – and discard – of the willing

buyer – willing seller mechanism. At the ANC's 52nd National Congress held in Polokwane December 2007, it was resolved that the willing buyer/willing seller policy is insufficient and at worst the cause for the lagging land reform process; this is the first deviation from the market-related approach to land reform (Steenkamp, 2008: 2).

2.2.2 LAND REDISTRIBUTION

The aim of the redistribution programme is to assist the poor and the previously disadvantaged in acquiring land for productive purposes. The aim is also to increase black ownership of land to redress the apartheid-caused imbalance of 87 per cent land in white hands versus the 13 per cent land accessible to blacks. Redistribution focuses on the rural poor, farm workers, labour tenants and new participants in agriculture as potential beneficiaries (Bosman, 2007: 5). This overlapped with the restitution process, in terms of which less than five per cent of the required 30 per cent of land was redistributed.

The first phase of the land redistribution programme stretches from 1994 to early 2000. A number of pilot projects throughout the country initiated the redistribution project. The Provision of Land and Assistance Act (Act 126 of 1993) is the enabling legislation for the Settlement/Land Acquisition Grant (SLAG) which is a financial grant for settlement and production purposes to assist historically disadvantaged people. The maximum amount that could be allocated for a household was R15 000, later increased to R16 000, and was linked to the housing grant, meaning that both grants could not be acquired by the same household (Aliber & Mokoena, 2003: 331-332).

SLAG was widely criticised and thought to be problematic for land redistribution. The critique against SLAG was that the beneficiary groups were too large; they could not manage complex agricultural enterprises and that post-transfer support was inadequate. Furthermore, the extremely slow pace of land reform only added more negative attitude towards the grant. A new Minister of Land Affairs and Agriculture, Thoko Didiza, was appointed and commissioned a review of the land redistribution programme (Aliber & Mokoena, 2003: 332).

The second phase of the land redistribution programme started in 2000 when the newly appointed Minister Didiza introduced the new redistribution flagship initiative, 'Land Redistribution for Agricultural Development', or LRAD. This grant focuses more on the establishment of a black commercial farmer sector and is criticised that it tends to exclude the poor as it requires an own financial contribution of minimum R5 000 to qualify for the grant. This programme is market-friendly and embraces the willing buyer – willing seller mechanism. Overall, this sub-programme has helped tremendously to speed up the process of land transferral under the redistribution programme (Aliber & Mokoena, 2003: 335).

A National Land Summit was held in July 2005 and opened debate around the effectiveness of the principle of willing buyer – willing seller. This principle is presently being reconsidered by the DLA because the slow progress of land reform needs to be accelerated if the goal of 30 per cent land transferred to blacks by 2014 wants to be reached (Bosman, 2007: 10). Another outcome of the National Land Summit was the policy of the Pro-active Land Acquisition Strategy (PLAS). This policy aims to accelerate the land redistribution process by changing the demand-driven programme to one where the department of land affairs and agriculture would pro-actively acquire, hold, manage, develop and dispose of land for reform without waiting for emerging farmers (SAIRR, 2007: 423; De Jager, 2007: 12).

Expropriation was initially intended to be used as a mechanism of last resort for the purposes of land restitution. Various indications have been given by the departments of land affairs and agriculture that government would introduce new legislation (the drafts were discussed in 2008) that would allow expropriation to be used not only for restitution, but for the entire land reform programme as well. In other words, white farmers' land could be expropriated in a bid to meet the target of redistributing 30 per cent of agricultural land to black people by 2014. For this to happen, the Expropriation Act (Act 63 of 1975) and the Restitution of Land Rights Amendment Act of 2004 will have to be amended and brought in line with the provisions of the constitution (SAIRR, 2007: 422). Many stakeholders, such as white farmers and organised commercial

agriculture are concerned that such a change in policy will jeopardise the constitutional right to private property as well as the payment of market-related compensation (De Waal, 2007b: 81).

As previously discussed in section 2.2.1, the amendment to the Expropriation Act (Act 63 of 1975) has been tabled in parliament in 2008. The Democratic Alliance (DA) sees this as an unnecessary step to speed up the land reform process. Government already has many channels and mechanisms through which land reform can proceed successfully, but evidently has not succeeded in using these efficiently (Nel, 2008). Not only can expropriation now be lower than market-value, but the Minister can decide him/herself what the 'public interest' is and to expropriate any property – including businesses, private homes, shares and any fixed assets – for this cause (De Milander, 2008). The constitutional guarantee of private property ownership is of fundamental importance for economic security. If legislation determines that any property can be expropriated by government under seemingly arbitrary provisions, then the national economy can fall victim to speculation and the risk of a decrease in investment confidence.

2.2.3 OTHER ASPECTS

Tenure reform is not only the most complex part of the land reform programme, but has to date also been the most neglected part. It seems that the government does not have enough political will to pursue this policy as it touches on very sensitive issues of communal land tenure in the homelands under the authority of traditional leadership.

Bosman (2007: 6) explains that the government aims to reform the current tenure system to improve the security of tenure for all South Africans. The issue is addressed in a revision of land policy, the administration of land and legislation regarding private property, communal ownership and the rights of those who rent their land or homes.

Several important legislative measures have been introduced to improve the security of tenure (Bosman, 2007: 6), these include:

- the Land Reform (Labour Tenants) Act (Act 3 of 1996) which protects the rights of labour tenants who had been rewarded for labour “primarily by the right to occupy and use land”;
- the Extension of Security of Tenure Act (Act 26 of 1997) which protects the tenure rights of farm workers and people who are associated with them;
- Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (Act 19 of 1998) which prohibits illegal evictions, and makes provision for procedures for the eviction of people who illegally occupy land; and
- The Communal Land Act which puts procedures in place to protect the tenure rights of people who live on communal or tribal land.

2.3 OUTLOOK

Mr Tozi Gwanya, the former director general of the DLA and chief land claims commissioner, does not think the land reform programme in South Africa is a success. As reported in the *Landbouweekblad* in 2007 (De Waal, 2007a: 10) Gwanya is of the opinion that the current course of the land reform programme will have detrimental effects on agriculture in the country if it is not accompanied with a poverty-approach that supports beneficiaries after they have settled on the land. Only 4 million hectares of land from the goal of 25 million hectares have been transferred to blacks. Gwanya contends that the target of transferring 30 per cent of land will only be reached in 2025 if it is done efficiently. He recognised a budget constraint (yet much of the budget went unspent which indicates that there are other problems as well) as one reason for the slow progress and estimates that R60 billion is needed to complete the process. The success of land reform should not be determined by the hectares of land transferred to blacks, but rather on the success and productiveness achieved by the newly established farmers (Barron, 2007: 9).

In March 2008 the Parliamentary Monitoring Group (PMG, accessed online 23/03/2008) reported that the outstanding claims for restitution were 4 891 of which 2 585 were

prioritised to be completed 2008/09. This was in the face of the deadline of 31 March 2008 for the finalisation of all restitution claims. Evidently, this target is yet another of the land reform programme that has not been reached. The insufficient budget, but also the 24.4 per cent job vacancy rate in the Departments of Land Affairs and Agriculture are accepted to be reasons for the slow pace of progress in land transferrals. A graduate skills training programme has been initiated in the department and 1 022 posts are waiting for the approval of the Department Public Services and Administration. These measures would to a certain degree address the issue of human capital and insufficient capacity in the department and contribute to more speedy land delivery.

Another two considerations that, according to Walker (2005a: 821-822), should be seriously considered when thinking about the land redistribution possibilities for South Africa, firstly pertains to the demography of the country and secondly the arable land available. Well over half the population (58 percent in 2005) lives in areas classified as urban and it is here that government has the biggest challenges to land reform and wealth redistribution. South Africa is not only an agricultural country any more, but has industrialised rapidly with large scale urbanisation. Consequently, few people are left on the rural countryside to be beneficiaries of agricultural land reform and of those, 70 per cent live in poverty. Foreign black Africans migrate to South African cities and towns. The second point Walker makes, is that South Africa is a semi-arid country that has only 13.5 per cent land classified as arable. New farmers entering the agricultural sector is quite likely to experience difficulty in making a success in production activities, especially with the challenging economic times of global restructuring and the national policy of deregulation of the commercial agricultural sector.

Since 2007 a change in government policy direction on land reform can be noted. This change is an attempt to speed up the slow progress of the land reform programme and its target of redistributing 30 per cent of agricultural land to blacks by 2014. The reasons for the slow progress and failure of almost 50 per cent of all the land reform projects are also under investigation (De Waal, 2008: 16-17; Sartorius, 2008: 8). It has become clear that

the main issues for both the state and the beneficiaries include financial and budgetary constraints, shortage of skills as well as knowledge and experience.

According to resolutions made at the ANC's National Policy Conference in 2007 and at the 52nd National Congress in Polokwane, documents state that government resolves to significantly accelerate the process through a strategy reformulation. In practice, this would require government to focus on the linkage between land reform, agrarian change and rural development (Hofstatter, 2007: 28-29). These focus areas are the three pillars on which the pursuit of economic transformation is built. Equity, one of the requirements in the constitution, is of significant importance to ensure that newly established black farmers' projects are successful and establishes a sustainable livelihood.

Other resolutions have been made by the ANC to further sharpen policy instruments in its pursuit of social transformation through land reform. Speeding up the land reform process through using the government's right to expropriate property, is only one measurement. The adequacy of post-settlement support to beneficiaries of land is also under review. If extension services can be improved it would increase the success rate of newly established farmers and mean the productive use of land. Government intends to regulate foreign land ownership by limiting the purchase of land by foreigners. The intention is to reserve more land for South Africans and as also for the goal of land reform (Jordan, 2007b: 4). A special land tax has been proposed to create incentives for the disposal of unutilised land and the de-concentration of land ownership. Stronger state capacity for the management and administrative processes and the devotion of greater resources and budgetary allocations are much needed.

It is the ANC's mandate to half poverty by 2014 as well as to fight unemployment and underdevelopment (De Waal, 2008: 16-17). These issues are considered to be closely related to the land reform programme because land is a source of potential wealth and functional in the agricultural business sector that largely contributes to labour absorption, export-trade and other related production industries in South Africa. Black economic empowerment and the deracialisation of agricultural ownership patterns is a necessary

but insufficient condition for the realisation of transformation goals in rural South Africa. Distribution of land should also be equitable to ensure that beneficiaries achieve productivity and economic profit and consequently sustain themselves and contribute to the larger economy.

CHAPTER III

LAND REFORM IN NAMIBIA

3.1 INTRODUCTION

Similar to the case of South Africa, land ownership in Namibia (formerly known as South West Africa) is skewed along racial lines. The majority of the population (94 per cent) who are black owned 48 per cent of the agricultural land in 1990 while the minority of the population (six per cent) who are white owned 52 per cent of the agricultural land in Namibia (Hunter, 2004: 1-2). The issue of land and related matters have been a pertinent issue in Namibia's liberation struggle and continues to be a point of contention in today's political and socio-economic debates. Namibia is the driest country south of the Sahara where land is becoming an ever increasing scarce natural resource. In the midst of a land reform policy the scarcity of land, especially arable land, needs to be taken into consideration to ensure efficient and productive land use. The question is how to balance equity, i.e. historical justice with production, i.e. food security.

Ecological constraints, such as a very dry climate, in Namibia together with the fact that land is a scarce resource exacerbate the intensity of disputes over land use, access to it and ownership of land. Namibia is Africa's fifteenth largest country and is amongst the fifteen lowest in population, yet land is a scarce resource since it mainly consists of semi-desert land which renders only about one per cent of this fragile ecosystem to be fertile and useable for agricultural purposes (Fair, 1991: 17-21; Okafor, 2006: 5-6). Land use is consequently not optimal for water dependent small-holder farming but better for animal grazing and ranching. In light of these circumstances it is clear why the German colonial settlers of 1884 annexed vast areas of land for themselves and created large livestock farms for a livelihood since land with agricultural potential is limited, except in Ovambo, Kavango and Caprivi in the far north (Hunter, 2004: 1-2).

Demographic factors of the indigenous population distribution, the organisational structures of the indigenous black communities and their land use customs are also influenced by the ecological circumstances of Namibia. Land, as central to the

indigenous people's subsistence, plays an essential role in traditional customs and beliefs, as well as the political and socio-economic fabric of the country. Historically land was never individually owned by the indigenous population, but held and used as communal property. The open spaces of communal land – known as rangelands – were freely shared by neighbouring communities for a variety of economic activities including animal grazing and hunting (Hangula, 1995: 6; Diescho, 1994: 93).

According to Hangula (1995: 4-7) the ethnic tribes used the land for either pastoralist or agriculturalist activities. In the northern parts of the country annual rain-fed cropping is practiced by the agriculturalist Kavango, Caprivi and former Ovambo communities. In the southern parts of the country, where it is by far drier, the pastoralist and cattle-holding Herero, Nama and Damara communities migrate often for grazing land as well as for hunting purposes. It is mainly with these southern tribes that the German colonists since 1884 came into conflict with over land. The German settlers dispossessed these blacks of their land and restricted their use of areas they identified as rangelands by fencing these areas off and turning it into cattle or game ranches (Breytenbach, 2004: 50; Hangula, 1995:6-7).

Before the German settlers arrived in Namibia, the history of land dispossession in Namibia can be dated back to the 17th century when the so-called Khoi Afrikaner tribe, under the leadership of Jonker Afrikaner, migrated into Namibia and acquired land by subjugation and conquest. This tribe, related to the Hottentot/Nama living in the Cape, fled northward across the Orange River and entered into wars over land with the Herero and even the Ovambo tribes of the more northern parts of Namibia. From 1840, when Jonker Afrikaner settled at what is today Windhoek, the Afrikaner tribe dispossessed all the indigenous people they encountered in that region. According to Kaura (2001: 34) this was the first 'land grab' that took place in Namibia. However, it would not be considered for restitution in the land reform policy after the independence of Namibia in 1990, as restitution applies only to colonial or settler policies.

3.2 LAND POLICIES BEFORE INDEPENDENCE

3.2.1 GERMAN COLONIAL RULE

In 1884 the German colonial forces arrived in South West Africa. Although the German government attempted negotiation for land, they soon turned to other more forceful methods to acquire land. In 1890 the German government annexed the area between the Orange River and the Kunene River as a German colony. This part of the country, which is mainly south of the so-called Red Line, would become known as the *Polizeizone* (Police Zone) and were proclaimed as government land. Portions of land in this southern part of the country were allocated to German colonialists for farming purposes and settlement. This was the start of Germany's active policy of colonisation and the dispossession of land from indigenous people (Kaura, 2001: 34; Hangula, 1995: 3).

As a consequence of the colonial land annexations a dual system of land tenure was established in Namibia. The indigenous people, mostly in the north, who held unto their land continued to live under the customary communal tenure system. In the south, where the Germans occupied land it was under a freehold system of private property rights. Hangula (1995: 3) writes that the first land policy formulated by the German colonial authority was in 1892. A proclamation was passed demarcating 'Crown Lands' and the 'native reserves' of Namibia. A few years later the South African (mandate) government since World War I, specifically since 1915, would use this as a starting point to further confine traditional communities to newly defined areas.

Wars of colonial occupation between the Germans and the Herero and Nama communities in the southern parts of the country were rife during the period of 1898 to 1907 (Odendaal, 2006: 5). In 1902 freehold farmland constituted six per cent of the total land area and communal land constituted 30 per cent of the total land area. In 1906 and 1907 the ancestral lands of the Herero and Nama were confiscated as a consequence of wars with Germany (Erichsen, 2008: 7). These were part of the Herero-German and Nama-German wars of 1903-1908. Already in 1911 freehold farmland constituted 21 per cent of the total land area and communal land had been decreased to nine per cent of the total land area (Odendaal, 2006: 5).

The Police Zone was established in 1912 and can be considered as the first step towards the creation of exclusive white areas. By 1913 German settlers owned 1331 farms and 90 percent of the all the livestock in the Police Zone. Indigenous communities were deprived of their land and confined to live in specified areas where they were discouraged to own stock because much less land was available to them for grazing (Kaura, 2001: 34). As an alternative means of living, blacks hired out their labour to white commercial farmers. This is how the labour supply system and wage structure was created (Sachikonye, 2004: 65-66; Werner, 2001: 1-2). Black Namibians were therefore economically disadvantaged through the racially skewed structure of access to and ownership of land and livestock.

However, more than 50 per cent of the population lived in the northern parts of the country. No land dispossession took place here (as it was north of the Red Line) and the communities lived undisturbed as agriculturalists in their traditional areas (Garoeb, 2001: 98). Only white commercial farms south of the Red Line are earmarked for redistribution (Breytenbach, 2004: 50), as this land was appropriated by the German colonists for extensive livestock farming and ranches (Werner, 2001: 1).

3.2.2. SOUTH AFRICAN RULE

During World War I South Africa conquered the German colonial forces of South West Africa, known today as Namibia and held the country as a League of Nations mandate for 75 years (Diescho, 1994: 8). Since 1915 the South African rule in Namibia made fundamental changes to and reconstructed the distribution of the ethnic black population. Kossler (2000) writes that the segregationist policies prevalent in the Union of South Africa were extended to Namibia through the institutionalization of differences between native ethnic groups and in apartheid-related homelands. Policies of divide and rule were imposed on ethnic groups as a strategy to base all social, economic and cultural development on ethno-regional principles (Diescho, 1994: 90-91). Even in the current land ownership and development patterns the political and economic conditions of the apartheid dispensation are still visible (Geingob, 2005: 29).

According to Werner (2001: 2) the establishment of white owned farms in the Police Zone was continued by the South African administration. In 1920 the South African (mandate) government authorised the Administration of South West Africa to set aside land previously held by the German colonial administration as Crown Lands and to allocate it to the native reserves (Odendaal, 2006: 5). Hangula (1995: 3) says these were the areas where aboriginal natives, coloured persons and Asians were to live. These groups of people were, where necessary, removed from areas that were specifically designated for the sole use of European settlements (Kossler, 2000: 449).

Homelands or native reserves were formally established through the creation of the Natives Reserves Commission and the promulgation of the Native Reserves Proclamation 11 of 1922 and also the Native Administrative Proclamation 15 of 1928 (Hangula, 1995: 3). All Africans were required to return to their ancestral place of birth, which formed part of the administratively designed ethnic groups (Diescho, 1994: 90-91). Native Namibians were not allowed to occupy, use or rent any land outside these areas in the Police Zone. The northern areas of Ovamboland and Okavango were not affected by this, since no land dispossession took place in that region (Kossler, 2000: 449-557; Odendaal, 2006: 6).

In 1925 the Police Zone accommodated 11 740 black people on 2 813 741 hectares of land. At the same time, about 1 106 white people were accommodated with 7 481 371 hectares of land in the Police Zone (Odendaal, 2006: 6). White people, the minority of the population, enjoyed the privilege of access to more than two and a half times the amount of land that blacks had access to. There were 16 native reserves in 1926 comprising a total of 2, 4 million hectares land for the sole occupation of black Namibians (Werner, 2001: 2). In the native reserves land were considered communal property and were held as non-freehold title land. By the 1950's the total amount of white farm units in the Police Zone have increased to 5 214 (39 million hectares) and accommodated 5 216 white farmers. The amount of farm units increased to 8 803 in 1965 meaning that some white farmers owned more than one unit (Werner, 2001: 2).

Together with the establishment of separate areas of development for different race groups, different governance systems for two race groups - white and black - were created from the sixties onwards. Black traditional leaders were appointed to rule over the homeland communities. These tribally based legislative assemblies and executive committees had limited measures of autonomy. They were in charge of the administration of the homelands and acted as the trustees of the communal lands which they had the power to control, manage and allocate. However, all binding decisions made by these authorities had to be confirmed by the South African authority to which it was subjected and which ruled over the rest of Namibia as well (Hangula, 1995: 3-14; Werner, 2001: 2).

The South African government attempted to use the traditional authorities in defence of its policy and administration of racial segregation. According to Hangula (1995: 14-15) a proclamation in 1954 declared the South Africa State President as the “Supreme Chief” of the natives and the traditional leaders became ‘chief ministers’ in their homeland territories. Through this measure the traditional authorities of Namibia were drawn into the orbit of its homeland policy. Consequently, the racially structured system of access to and rights in land in Namibia was formalised and perpetuated.

Hangula (1995: 3-4) and Odendaal (2006: 7-8) writes that the Odendaal Commission, implemented in 1962 to enquire into the affairs of the blacks in Namibia, recommended that the homelands ultimately be guided to and granted self-governance as in South Africa with the Transkei and others. The dichotomy between white and black dominated areas were sharpened as two socio-economic areas, the commercial and the communal areas, developed in isolation from one another and under different land tenure systems. The commercial areas were land that was held in freehold title by whites and the communal areas (covering almost 33 million hectares land) were under customary traditional law and comprised of the land set aside for blacks (De Villiers, 2003: 31). Today the land distribution issues in the communal areas are concerned about rights to ownership of land, the scarcity of land and environmental degradation mainly due to the pressure of too large concentrations of people and livestock in these areas.

As a response to these recommendations of the Odendaal Commission, legislation would be formulated by South Africa and passed to transfer all the land within the homeland boundaries to ethnic legislative assemblies (Stals & Esterhuysen, 1991: 36). The Development of Self-Government for Native Nations in South West Africa Act (Act 54 of 1968) proclaimed the establishment of ten native reserves or homelands for blacks which were later recognised and encouraged to develop towards limited self-governance (De Villiers, 2003: 31; Fair, 1991: 17). The division of land between white and black was still highly inequitable with 75 per cent of total land available only for the use of the white population which comprised of eight per cent of the total population (Diescho, 1994:93).

The Representative Authorities Proclamation 8 of 1980 (known as ‘AG 8’) established ‘second-tier’ governments. These authorities were the trustees of land in the homelands and could lease or allocate land on a communal basis to their ethnic community (De Villiers, 2003: 31). But South Africa was still the owner of the land and the Cabinet had to issue a certificate to confirm the land transaction as legal. Only in 1990 would the ‘AG 8’ be repealed by the constitution of Namibia (Odendaal, 2006: 8).

When Namibia became independent in 1990 and South Africa ceased to rule over the country, the divisive legacy of apartheid in local authority structures would become undone through a reorganization of patterns of local government and administration (Diescho, 1994: 87-88). These new structures would be determined by the new constitution of Namibia (1990) within which there would be various articles dealing with local authority structures, their constituencies as well as their designated powers and functions. It would be a radical departure from the pre-independence patterns.

One such instance of a change in local authority structures pertain to the institution of traditional leaders. At independence the position of the traditional leaders became insecure. Legislation describing the role of the traditional leaders was not only unclear, but it was also questioned and this could potentially have lead to the erosion of the structures that kept the traditional leaders in place. However, Hangula (1995: 14-15)

writes that a Council of Traditional Leaders was established through the provision of Article 102(5) of the Namibian constitution. Through this provision, the traditional leaders' position is more secure as they now have to fulfil the function of advising the president on the control and utilisation of land in the communal areas (Diescho, 1994: 87). All the communal land is still vested in the Head of State and this calls for cooperation between the Traditional Authorities and the Office of the President.

3.3. LAND POLICIES AFTER INDEPENDENCE

Access to land, as in most other settler societies, is one of the main issues that fuelled the struggle towards liberation in Namibia. In 1990 Namibia became an independent republic under the leadership of the South West African People's Organisation (SWAPO). The election manifesto of SWAPO commits the party to land reform for the 'landless majority' as a measurement of national reconciliation (Okafor, 2006: 2; Geingob, 2005: 23). Due to intensive state interference and financial support, land policies of discriminatory nature created an imbalance in property relations along racial lines and needs to be redressed to establish equality among all people.

Included in this emotive debate, are the issues of equality and justice, and the productivity of the agricultural sector (De Villiers, 2003: 33; Hunter, 2004: 4). One particular issue pertains to the differences in land use among people living in Namibia. The majority of the Namibians (black) are (still) subsistence farmers who live off the land and a minority (white) who own much of other lands, use it for commercial purposes. Both these groups are emotionally bound to the land and this renders the land issue even more complex to resolve, especially since land is a scarce and non-renewable resource (Diescho, 1994: 93-94). In the spirit of national reconciliation the constitution is a framework for land reform but does not intend to resolve all issues instantly by arbitrary land seizure. It is to apply lawful procedures through which government can acquire land and thus prevent the confiscation of white-owned land.

The land reform programme in Namibia since 1990, is a response to the outcry against the volume of land under the ownership of commercial white farmers versus the

*disproportionate volume of land that constitute the communal black areas. At the time of independence white commercial farmers (six per cent of the population) owned 52 per cent of agricultural land while blacks (94 per cent of the population) owned 48 per cent of the land (Hunter, 2004: 1). An independent Namibia embarked on a land reform policy which is based on a number of policies and legal frameworks that act as cornerstones for the land reform process. These include the 1990 constitution of the Republic of Namibia, the 1991 Land Reform Conference and the Agricultural (Commercial) Land Reform Act (Act 6 of 1995).

3.3.1 PROVISIONS IN THE CONSTITUTION

The constitution of the government of the Republic of Namibia (1990) is the supreme law of the country. All other legislation and policies passed by the government have to be in line with the basic provisions and stipulations of the constitution. Namibia's constitution was written with the intention to promote the interests of all previously disadvantaged persons, to alleviate poverty, and to create a more equitable society (Mudge, 2004: 100). Obstacles that impede the majority's acquisition of land rights are removed and now regulated through the protection of each individual's land rights (Diescho, 1994: 93-95). The land reform programme and all relevant policies have to accord with the constitution to achieve these goals.

Provisions are made in the constitution whereupon a framework for a land reform programme can be built (Hunter, 2004: 129). These provisions are in article 16, which states:

- (1) All persons shall have the right to, in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees; provided that Parliament may, by legislation, prohibit or regulate when it deems expedient the right to acquire property by persons who are not Namibian citizens.

* The note on page 13. It is customary that sub-sections of the Namibian Constitution are referred to as "articles" (eg. Diescho)

- (2) The state or a competent body or organ authorized by law may expropriate property in the public interest subject to payment of just compensation, in accordance with requirements and procedures to be determined by Act of Parliament.

Individual private property rights as well as the government's right to expropriate property, on the conditions that it is in the public interest and accompanied with just compensation, are provided for in articles 16(1) and 16(2). Just compensation is to be determined by an act of parliament, in this case the Agricultural (Commercial) Land Reform Act (Act 6 of 1995). These are the basic principles which constitute the legal framework for the land reform policy (Fuller, 2004: 83; Hunter, 2004: 2).

Article 16(1) recognises the right to private property as a fundamental right (Treeger, 2004: 2). Deprivation of property can only be done through the due legal process and on justifiable grounds. Article 22 of the Namibian constitution specifies the grounds on which fundamental rights (such as the right to property) and freedoms can be limited. A limitation on the right to property will only be legal if the limitation is provided for in legislation and if the limitation is generally applicable and not aimed at a particular individual (Treeger, 2004: 5). As a safeguard against similar abuses as those committed by the German and South African governments, Article 131 provides for the entrenchment of clauses dealing with the protection of fundamental human rights. Even a two-third majority cannot amend or change these provisions. Also, Article 5 of Chapter 3 clearly limits the powers of the Parliament and President in terms of fundamental human rights (Diescho, 1994: 52, 59).

The legal foundations for expropriation – the limitation on private property through compulsory acquisition – are stipulated in the Agricultural (Commercial) Land Reform Act (Act 6 of 1995) and are to be applied in general. Therefore, expropriation that is done according to this act is lawful. Only under the following four conditions can property (in this case agricultural land) be legally expropriated: if it is classified as under-

utilised, excessive or acquired by a foreign national, or of land where the application of the willing seller - willing buyer principle has failed (Treeger, 2004: 2).

Article 16(2) is the expropriation clause in the constitution. In addition to expropriation being done according to the stipulations mentioned above, it should also be done in the public interest and accompanied with just compensation. The constitution does not define what 'public interest' is, but when expropriation is intended to benefit the public at large (versus a private person) or when it is for the purpose that government can adhere to its public obligations, it is considered to be done in the 'public interest'. The expropriation authority has the discretion to decide on this matter (Treeger, 2004: 2-3). Land reform and resettlement programmes should be included as 'public interest' as the outcome of restitution and redistribution contribute to the greater good of society.

What constitutes the 'just compensation' that must be paid, according to article 16(2) of the constitution for expropriated property, is dealt with in section 25 of the Agricultural (Commercial) Land Reform Act (Act 6 of 1995). There is a list of criteria for the assessment of the amount of compensation, however it does not stipulate that it has to be a market-related value, but can be considered (Treeger, 2004: 6-7). The principle of willing buyer – willing seller is only a recommendation and not specifically called for in the constitution (Kaumbi, 2004: 93).

In the light of discussing the constitutionality of expropriation and its conditions, two examples can be mentioned where the legality of government's intent to advance the land reform programme, is in question. One example is the decision at the National Conference in 1991 and also undertaken by government, to expropriate the land of absentee landlords. Namibian landlords who are part-time or weekend farmers are thus targeted for expropriation. Yet, the law does make a distinction between Namibian and foreign land owners and says foreigners are first to lose their land. It will therefore be unlawful to expropriate land under the reason of 'absentee landlord' because the Agricultural (Commercial) Land Reform Act (Act 6 of 1995) does not provide for this in its list of expropriation criteria.

The second example is that government has given indications that it might aim to expropriate farms where excessive disputes between the farm management and the employees are not resolved. Many farm workers have lived and worked on farms for a number of years. These workers have insecure tenure rights and need protection when they are retrenched or dismissed. Government believes that this labour issue can be resolved through land redistribution and aims to address this issue by expropriating farms where labour disputes have arisen. To expropriate land for this reason will however be unconstitutional and render expropriation a punitive and arbitrary measure. Rather, the focus should shift to labour laws for a sustainable solution (Treeger, 2004: 5).

Article 18 of the constitution makes it possible to challenge the expropriation procedure. It states that “...persons aggrieved by the exercise of acts and decisions shall have the right to seek redress before a competent Court or Tribunal”. The possibility is there for anyone, such as commercial farm owners who appose expropriation, to challenge the Agricultural (Commercial) Land Reform Act (Act 6 of 1995) in the High Court (Odendaal, 2006: 23).

3.3.2 THE LAND REFORM CONFERENCE, 1991

After independence a request was made to government to call a national conference with the objective to “achieve the greatest possible national consensus on the land question” (De Villiers, 2003: 33). This conference was a political opportunity to design rules for land reform with a view to allow disparate views on and interest in land, distribution of land and the use of it (Horsthemke, 2004: 87). Government indicated that land reform was a priority to them and of political importance when the Prime Minister of the time chaired the National Conference on Land Reform and the Land Question that was held in 1991. The Land Conference, the only of its sort in the region, was shaped by the Namibian policy of reconciliation and the provisions in the constitution (Breytenbach, 2004: 55; Werner, 2001: 5).

Stakeholders, such as marginalised communal farmers and prosperous and well-organised commercial farmers from all parts of the country, were invited to take part in this

consultative process. Research data were presented and forums were held where grievances and issues from all stakeholders could be heard (Werner, 2001: 5). The main question of the Conference was “what should the basis for land reform and in particular the restoration of land rights be?” (De Villiers, 2003:33). The objective of the conference was to provide a solid basis for the formulation of a land reform policy and programme of action to implement the measures decided upon (Werner, 2001: 5). The conference had no powers to make binding decisions, but made 24 resolutions which would form the basis of the land reform programme (Werner, 2004a: 109). Built on these resolutions the government’s land reform policy and plan of action turned out to be relatively conservative and to ensure political stability and investor confidence in the country (Fuller, 2004: 83).

Consensus was reached that ancestral land would not be restored to those dispossessed of land under racially discriminatory legislation. De Villiers (2003: 34) and Werner (2001: 5-6) write that it was decided that the nature of the conflicting and competing land claims on freehold land is too complex and renders the restitution process impossible. Consequently, land would be redistributed to all historically disadvantaged persons – not only those affected by land-grabbing (Hunter, 2004:3). Another issue that was raised pertained to the ownership and use of commercial farms by foreigners and absentee landlords. The proposition was that these owners, as well as those owners of underutilised land, should be targeted for land reform and be subject to expropriation. Land ceilings and a land tax would be considered as incentive for land owners to sell underutilised and unutilised land, and also to create additional revenue for the state to acquire more land (De Villiers, 2003: 34).

It was also proposed (De Villiers, 2003: 34; Werner, 2001: 6) that communal areas should be retained, developed and expanded. Mainly the poor live in communal areas and it is their rights and access to land that should be protected and enhanced on a shared basis. Illegal fencing need to be prohibited and removed where already erected. For this, land allocation and administration in communal areas would have to democratise while still respecting the rights and customs of ethnic communities in communal areas. The role

of traditional rulers would have to be clarified and land boards should be established to oversee the allocation of communal land. Furthermore, established communal farmers should acquire land outside communal areas when possible in an effort to alleviate pressure on the communal lands.

The plight of the farm workers and women in agriculture was also discussed. There was general consensus that their rights should be protected under labour codes. The farm workers should have the right to reside on farms after retirement and they should be granted grazing rights as well. Women should be given rights to own the land they cultivate and to inherit land and property (Werner, 2001: 6). Disappointingly, there were no resolutions on post-settlement assistance for land redistribution beneficiaries. There is still a need for a national land use plan to guide the acquisition of land and to maintain a balance between economic growth, agricultural employment and foreign investment (De Villiers, 2003: 34).

Unfortunately, it seems that the momentum of a consultative land reform programme was lost after this initial enthusiasm. Only in 1994 did non-governmental organisations initiate another conference to review the present reform measures and to provide another forum for the voicing of opinions the land reform programme. A conference, The People's Land Conference, was held in Mariental on a smaller scale than the National Conference (Keulder, 1997: 31). The Namibian Non-Governmental Organisation Forum (NANGOF) was delegated to lobby government for draft legislation and policies (Werner, 2004a: 116). NANGOF were invited to assist in drafting the Communal Land Bill, but the Agricultural (Commercial) Land Reform Bill was tabled in parliament without the opportunity for stakeholders to consider the draft legislation (Werner, 2001: 6). Consultations between government and stakeholders are disappointingly little due to perceived reluctance from government's side and weak organisation from the landless. Civil society in Namibia is not particularly strong, even discouraged by the SWAPO-government.

3.3.3 THE AGRICULTURAL (COMMERCIAL) LAND REFORM ACT (ACT 6 OF 1995)

The first major legislation on land reform was only passed in 1995 which was five years after Namibia became independent. Article 16 in the constitution of Namibia makes provision for an act of parliament to determine the criteria for expropriation of freehold land (Werner, 2001:7). In terms of the Agricultural (Commercial) Land Reform Act (Act 6 of 1995) the government has the power to acquire agricultural freehold land for the purposes of land reform and can redistribute it to all Namibian citizens who have been previously disadvantaged or do not own or have access to land.

The criteria for the compulsory acquisition of agricultural land is stipulated in section 14 of this Act, as land that is under-utilised, excessive, owned by a foreign national or where the willing buyer – willing seller mechanism has failed. Expropriation may be done under one of these four categories. As long as the law is applied in general to all foreign nationals with the payment of just compensation, it is not discriminatory according to international law (Treeger, 2004). The relevant criteria for the assessment of the amount of compensation payable for expropriated land are established in section 25 of the Agricultural (Commercial) Land Reform Act (Act 6 of 1995). The basic question arises whether just compensation must reflect the actual market value of the expropriated property. Market value is only one of the criteria that have to be considered to determine the value of the property. This is the option usually favoured by commercial farmers.

According to Odendaal (2006: 24), section 14(2) of the Agricultural (Commercial) Land Reform Amendment Act (Act 14 of 2003) stipulates the Minister has the power to expropriate *any* type of commercial agricultural land. In other words, *anyone's* property, black or white, Namibian or foreigner, absentee landlord or full-time farmer, would be eligible for acquisition if the government feels that 'it can be used better'. Another technicality regarding the validity of the reason for the expropriation of property is the inclusion of 'public interest' in legislation and what the exact definition is. In section 14(1) of the Agricultural (Commercial) Land Reform Amendment Act (Act 14 of 2003) the term 'public interest' has been included. Land can thus be expropriated for the

purposes of redistribution as part of the Land Reform and Resettlement Programme (Odendaal, 2006: 23).

Other provisions that are made in this act are as follows:

- when a farm is put on the market for sale, the first option to buy should be given to government (willing seller – willing buyer)
- one single owner cannot have multiple land holdings
- commercial farmland cannot be owned by a non-Namibian
- a Land Reform Advisory Commission should be created to help government to identify suitable farms for resettlement and to facilitate dispute resolution

The Land Reform Advisory Commission (LRAC) was established in terms of the Agricultural (Commercial) Land Reform Act (Act 6 of 1995) to advise the Minister of Lands, Resettlement and Rehabilitation (MLRR) on the suitability of land on offer and also to recommend on its allocation and utilisation based on a land use plan. (De Villiers, 2003: 35; Werner, 2001: 7). Beneficiaries are to be identified by the LRAC after an invitation to apply through advertisement is placed, but up to 2001 no advertisements have been placed yet. Any disputes that might arise over prices between the sellers and the government is to be solved by the Land Tribunal and Regulations Board that is established in 1995 on provision of the Agricultural (Commercial) Land Reform Act (Act 6 of 1995) (Werner, 2004a: 110).

Historically there was no land tax in Namibia, but in 2001 the Agricultural (Commercial) Land Reform Second Amendment Act introduced a land tax on commercial agricultural land (Odendaal, 2006: 21; Werner, 1997: 6). With this policy the government is trying to persuade land owners to give up some of their land units, as it would become too expensive. Also, much needed revenue for the Land Acquisition and Development Fund can be collected to buy more land for resettlement. The first collection of this tax was made in the financial year 2005/06.

3.3.4 OTHER LEGISLATION

In 1998 the National Land Policy was published (Breytenbach, 2004: 55). Although government is committed to alleviating poverty and considers land and agriculture to play key roles in economic production levels, the role of land reform in poverty reduction programmes is ambiguous. Werner (2004a: 117) writes that the National Land Policy states that government policy will 'at all times seek to secure and promote the interests of the poor' and ensure 'equity in access to land in security of tenure' (RoN 1998: 1). Three documents on poverty alleviation, *The Poverty Reduction Strategy for Namibia* of 1998, the *National Poverty Reduction Action Program 2001-2005* and *The Second National Development Plan* (NDP2) do not consider agriculture as a sustainable basis for prosperity and therefore do not continue on how land reform can support rural development to ultimately reduce poverty.

Communal rural areas have received little attention since independence. Before independence the Representative Authorities, created by the colonial government, acted as the extended arm of government authority in the communal areas. After independence these Authorities were dissolved and the role of traditional leaders unclear. Werner (2001: 9) contends that the Traditional Authorities Act (Act 17 of 1995) does not provide them with any powers regarding land allocation and management. The Traditional Authorities therefore only assume customary responsibilities and regulate the inheritance of customary allocations without an appropriate legal framework (Werner, 2004a: 113). This legislation subordinates the traditional leadership position to elected administrative structures and prohibits traditional leaders to participate in politics (Keulder, 1997: 1).

Before independence the traditional leaders exerted exclusive control over much of Namibia. Today their position is weaker. After independence Article 108 in the constitution provided for the Regional Councils Act (Act 22 of 1992) which was promulgated and changed and transferred the traditional leaders' responsibilities to newly established councils. This administrative reform measure extends democratic governance to rural areas, contributes to the State's monopoly over social control and ultimately subordinates customary law to common and statutory law. Traditional Leaders would

increasingly be excluded from communal land administration in an attempt to restructure the inherited colonial state (Keulder, 1997: 1, 37). Whether it is more, or less democratic, is an open question.

A discussion on the framework of the Draft National Land Policy and the Draft Communal Land Bill indicated that rather than achieving equity in land ownership, the aim was to create a unitary land tenure system for Namibia. According to Keulder (1997: 32) communal tenure systems were to be transformed to the commercial system of freehold and leasehold. Land rights could therefore not be held communally. Land Boards are envisioned and would constitute of various elected and appointed members from the region which would include representatives from traditional authorities and effectively exclude traditional leaders themselves.

This research does not investigate or describe in any detail tenure rights in communal areas. Therefore, no in-depth attention will be spent on the issue of tenure security and leasehold rights of blacks in communal areas. The majority of blacks live in communal areas where land is held in non-freehold title and customary rights apply. Blacks consequently cannot own the land they occupy or work on and this renders their rights in land insecure. Communal land reform is therefore seen as significant in alleviating poverty (Hunter, 2004: 3).

Seven years after the Agricultural (Commercial) Land Reform Act (Act 6 of 1995) was passed, the Communal Land Reform Act (Act 5 of 2002) was promulgated to address the issues of land rights in communal areas. The aim of this act is to make unused communal land available to individuals under leasehold and consequently contribute to agricultural development. Traditional leaders' powers of allocating land rights will be confirmed yet their jurisdiction will be reduced by bringing customary land under the state control (Werner, 2004a: 113).

According to Odendaal (2006: 25-26) this act provides for the establishment of regional Communal Land Boards to control the allocation of customary land rights by chiefs or

traditional authorities, thus regulating the political powers and influence they have in relation to communal land. Customary land rights that may be allocated in communal land include the right to a farming unit, a residential unit and any other form of customary tenure as recognised by the Minister. In effect, the powers exerted by the traditional leaders over communal land administration will be reduced and transferred to the Land Boards (Keulder, 1997: 1).

All land rights in communal areas have to be recorded and registered as either customary land rights or rights of leasehold (Werner, 2004a: 113). One of the problems in communal areas is the lack of effective legal protection for leaseholders and their rights in land. Only time will tell if the communal land boards can successfully address this issue. Some of the beneficiaries of the land reform programme's resettlement projects are allocated land in communal areas (Odendaal, 2006: 25-26). Land rights in the communal areas have therefore not been a high priority thus far and remain a contentious issue (Hunter, 2004: 3).

3.4 ASSESSMENT: THE IMPACT OF POLICIES ON LAND REFORM

Land Reform in Namibia is mainly concerned with redistributing commercial farms of white owners to black Namibians as well as tenure reform in communal areas. These concerns are taken up in three strategies:

- 1) Redistributive Land Reform
- 2) Affirmative Action Loan Scheme
- 3) Development of Resettlement Projects in Communal Areas

The Affirmative Action Loan Scheme (AALS), which was implemented for the first time in 1992, is a mechanism through which formerly disadvantaged farmers can purchase commercial farmland with the help of a subsidy. Sherbourne (2004a: 15) writes that the AALS is based on three rationales:

- to promote the ownership of farmland by the disadvantaged
- to move large livestock in communal areas to commercial farmland

- the disadvantaged to become fully-fledged commercial farmers and contribute to the economy

In 1991 the Agricultural Bank Amendment Act (Act 27 of 1991) and in 1992 the Agricultural Bank Matters Amendment Act (Act 15 of 1992) were passed which established the AALS. Full or part-time communal farmers that aspire to become commercial farmers can apply for the AALS. It is required that these farmers own 150 large stock or 800 small stock. The loan is from the Agribank and has a subsidy element that is financed by government in an annual budget (Sherbourne, 2004b: 2). This is a market-based mechanism which creates access to land and contributes to the redistribution of land to emerging farmers with the advantages of a low interest rate and long pay-off term.

Although the AALS was introduced as a complementary alternative of land redistribution to the land reform programme, it has an adverse effect on the resettlement option. This is because farm land for sale is purchased at a faster pace by AALS beneficiaries than by the state. There is quite a number of AALS buyers – which means land prices augment as there is a higher demand – and their transactions are much less cumbersome than that of the state. As a result, the land available to government through the willing seller – willing buyer mechanism, is reduced. Land prices may be over-valued as the AALS buyers can pay higher prices, but this again weighs a greater financial burden on the state that provides the subsidy. By the end of March 2004, a total of 199 loan recipients out of 544 have defaulted on their payments (Okafor, 2006: 88).

The upside of the AALS is that it has contributed greatly to the increased amount of land redistributed. Under the AALS more than three and a half times the volume of land has been acquired and redistributed to previously disadvantaged Namibians than the volume of land government has appropriated for resettlement purposes (Sherbourne, 2004b: 1-5). During the period of 1992 – 2003 the AALS purchased 3 125 143 hectares of land under 528 loans, while the government under the National Resettlement Policy (NRP) acquired a total area of 829 486 hectares of land by the end of 2003 for redistribution purposes.

Mosotho and Tsiu (2008: 6, 8) contend that only 30 720 people out of an estimated 243 000 landless, unemployed and homeless Namibians had been resettled by 2003.

As part of the land reform programme, government intends to improve the standard of living of the previously disadvantaged by providing them with access to land with secure tenure. In order of priority, the target groups are the San community, ex-soldiers, the displaced, destitute and landless Namibians, those with disabilities and people from overcrowded communal areas (Okafor, 2006: 4; Werner, 2004a:111). Access to land and secure tenure are to be provided to these beneficiaries through the Farm Unit Resettlement Scheme (FURS) programme of the 2001 NRP's (White Paper) objectives, which are, according to Mosotho and Tsiu (2008: 10), to:

- alleviate poverty
- redress past imbalances and ensure access to land
- create the opportunity to reach self-sufficiency
- help smallholder farmers enter the national- and the market economy
- alleviate pressure of humans and livestock on communal land
- create employment through full-time farming

The Ministry of Land and Resettlement (MLR) use economic indicators to determine and select those applicants who qualify as successful candidates for beneficiaries (Okafor, 2006: 4; Odendaal, 2006: 27).

It is within the MLR's goals to ensure equitable distribution of land, sustainable economic growth as well as efficient and sustainable land use (Okafor, 2006: 76). The NRP uses the lengthy and bureaucratic willing seller – willing buyer mechanism to acquire land. While the AALS is based on clear individual property rights, responsibility and incentives and focuses on the upcoming commercial farmer, the NRP focuses on the poorest of the poor for resettlement. The beneficiaries of the NRP are identified through careful consideration by the National Resettlement Committee and allocated certain parts of a farm which they receive the right to use for 99 years, but not to own. After settlement support is provided and resources and facilities are shared among the settlers.

These settlers do not have to repay the loans provided by the MRL (Sherbourne, 2004b: 2).

Former Prime Minister Theo-Ben Gurirab has voiced the frustration with the slow land redistribution process. Nevin (2004: 28) writes that the blame for the slow pace of redistribution is given to white commercial farmers who do not make their land available for the government to purchase it. The 'willing buyer – willing seller' policy is causing the land prices to be inflated and above what the market price would normally be. Consequently, productive land is unavailable for redistribution and the costs of the process are increasingly becoming higher. Government wants to speed up the process and announced that 192 foreign owned farms (of German and South African owners) are earmarked for expropriation. It was however explicitly said that fair compensation would be paid to these farmers. By mid-2007 only four farms had been expropriated. Although government intends to speed up the process, there is still reluctance to use its expropriation powers. Only after the lengthy willing buyer – willing seller mechanism has failed, does government consider expropriation (Mosotho & Tsiu, 2008: 12).

From another perspective the mainly white Namibian Agricultural Union (NAU) reports to be satisfied with the (slow) pace of the land redistribution process: orderly but legalistic. Since 1990 approximately 1300 farms (6 million hectares of land) have been acquired through various methods for the purposes of land redistribution. In order to reach the target of redistributing 15 million hectares commercial farm land to previously disadvantaged Namibians by 2020, another 9 million hectares have to be acquired ("Namibië se grondhervorming", 2007: 16). The NAU supports the land reform policies that are in place as well as the government's orderly and legalistic approach to the process.

One major obstacle to the success of land reform is the low productivity of newly established and emerging farmers on the farms they have been resettled on. Reasons for this include the subdivision of farms into too small pieces of land that is insufficient for commercial productive purposes as well as the new farmers' lack of skills, knowledge

and experience to farm (“Namibië sukkel”, 2007: 82). Many newly settled farmers are however former farm workers and although they do have farming skills, the absence of key components to successful resettlement such as support services for post-settlement, constrain the agricultural output. Farms are mostly used for subsistence farming and do not contribute to the country’s economy (Mosotho & Tsiu, 2008: 5), for surplus food security.

The question remains whether government has enough political will to vigorously pursue and deliver on land reform. Up to date an average of only one per cent of land has been redistributed per year. The power base of the ruling political party SWAPO lies in Ovamboland which is north of the Red Line and mostly occupied by the dominant ethnic group - the Ovambo ethnic group (Fair, 1991: 17). Approximately 50 per cent of the population live there and were undisturbed during the colonisation period with no land dispossessed from them (Garoeb, 2001: 92). It is only about 10 per cent of the population, all of them south of the Red Line, who was affected by colonial land-grabs (Hunter, 2004: 3). These people do not generally form part of the SWAPO power base.

Evidence that government intends to speed up the process, can be found in the budget increase over the past years. The 1994 SWAPO manifesto commits N\$ 20 million per year for five years to the National Resettlement Policy to purchase land. The funds were only provided from 1996/97 (Sherbourne, 2004b: 2-3). In 2002 the SWAPO Congress recommended that N\$ 100 million be made available in the budget for the NRP and also, to earmark the 192 farms owned by absentee landlords for expropriation. Although the budget was increased in 2003/04 financial year, it was only to the amount of N\$ 50 million per year as it still is today (Mosotho & Tsiu, 2008: 9). Ironically, for the period of 1996/7 – 2000/01 only two thirds of the budgeted expenditure for resettlement was actually spent. But in the following year, the actual expenditure exceeded the budgeted expenditure.

In a research report by Erichsen (2008: 19, 32-33) it is said that most Namibians today believe they are entitled to money as reparation for the atrocities done by the German

colonial government, but would prefer to receive land and developmental assistance in their area. This is understandable against the backdrop of abject poverty and institutionalised underdevelopment which is seen to be rooted in the racially discriminatory legislation that dispossessed native Namibians of rights in land and established their inferior position of socio-economic and political standing.

It was mostly the Nama and Herero people of the southern parts of Namibia who were subject to racial discrimination and colonial atrocities, especially at the time of the German colonial wars with the Nama and Herero people during 1903 – 1908. Germany has been accused of pursuing genocidal policies during these wars and Namibia laid claims for compensation against the German government in the 1980's. Only in 2004 was conciliation reached when the Namibian government accepted the German Development Minister's apology for Germany's past atrocities (Erichsen, 2008: 9-11). In 2005 Namibia received a development package of Euro 20 million which could be used for reparations towards the victims of racial discrimination and dispossession.

CHAPTER IV

A COMPARISON BETWEEN SOUTH AFRICA AND NAMIBIA

4.1 INTRODUCTION

This chapter draws a few important similarities and differences between the land reform programmes of South Africa and Namibia. Part of the introduction of this chapter will be dedicated to a substantial discussion of each country's constitutional provisions while the rest of the chapter mainly focuses on the land restitution and redistribution policy programmes. A brief comparison of land tenure reform is presented, but it is not an elaborate discussion as land tenure is not one of the main components of this research project. Lastly, other relevant aspects are pointed out and are part of the conclusion.

South Africa and Namibia share the commonality that both are previous settler colonies which had experienced colonial land annexation and alienation by white settlers. Large-scale farming/landlordism was subsequently established under apartheid governments to the detriment of black indigenous communities (Kariuki, 2007: 99; Moyo, 2007: 7). Vast tracks of land were taken from blacks and allocated to whites who held land privately under freehold title while blacks were confined to smaller areas of land. This became either state or land occupied communally with insecure tenure rights. Land reform after democratisation was supposed to address and reverse inequality of ownership in both South Africa and Namibia.

Overall, South Africa has a much larger population than Namibia. Proportionately, there are more white people in South Africa (9.6 per cent of a total population of almost 49 million) than in Namibia where six per cent of a total population of two million are white (CIA Factbook, 2008a and 2008b: accessed online 2/10/2008). Land ownership is overwhelmingly skewed along racial lines in both countries, but to a much greater extent in South Africa. In South Africa the proportion of privately held land (land dispossessed from blacks and held by whites) in 2000 was 72 per cent of a total of 1221 hectares land and much greater than the proportion of freehold land in Namibia (44 per cent of a total of 824 hectares land) (Adams & Howell, 2001: 1-2).

All the black people in South Africa (including coloureds and Indians) were subjected to insecure land rights or land dispossession, whereas in Namibia only smaller groups south of the Red Line were dispossessed of their land; blacks north of the Red Line who constituted more than 50 per cent of the population were not dispossessed (Garoeb, 2001: 98). The apartheid policies implemented in South Africa were mirrored in Namibia when South Africa held the country as a mandate for 75 years (Diescho, 1994: 8, 90-91; Kossler, 2000). Blacks, who constituted by far the majority of the population in both of the respective countries, were removed from some of the land they occupied and confined to ethnically based homelands where their tenure rights were insecure. (Kariuki, 2007: 100).

Namibia is one of the driest countries in Africa. Only about one per cent of the total land area is fertile and useable for agricultural purposes (Fair, 1991; Okafor, 2006). Only the northern parts of the country are fit for rain-fed cropping, while the southern parts are much more dry and useful as grazing land for cattle-holding farms (Hangula, 1995: 4-7). In terms of the objectives and projected outcomes for land reform, which include the promotion of environmentally sustainable land use, rural and agricultural development as well as an increase in food production (Moyo, 2007: 9), the ecological characteristics of Namibia hamper the success of this realisation.

A misleading perception among Namibians that commercial farming is a guarantee for wealth encourages the demand for farm land. What is often not taken into consideration, is the pre-independence state subsidies that farmers received, but do not receive anymore due to the market liberalisation of the industry. Commercial agriculture is rarely productive and many white farmers are heavily indebted (Sherbourne, 2004a: 8). In a country where there is this little arable land and the agricultural sector average a modest contribution of around 10 per cent to the Gross Domestic Product (GDP), the focus on and importance of land ownership and resettlement on agricultural land becomes questionable (Kariuki, 2007: 101 - 103).

Comparatively, there is more arable land (approximately 12 per cent of the total land area) in South Africa (CIA Factbook, 2008b: accessed online 2/10/2008). The bulk of South Africa's arable land lies geographically concentrated in what is called the 'green corridor' of Mpumalanga, KwaZulu-Natal and the Eastern Cape where rainfall and climatic conditions are favourable for crop harvesting (Kariuki, 2007: 103; Van Burick, 2008: 85). The land reform programme encourages people to derive a living from land related activities. But the question is asked whether the amount of beneficiaries and emerging commercial black farmers intended to be resettled can all be accommodated in an economically sustainable way on the small percentage of land that is suitable for agricultural activities. Aliber and Mokoena (2003: 336) describe the dilemma as an 'arithmetic failure'. The size of the rural economic problem (in terms of landlessness and rural unemployment) is not equalled by the scale of redistribution.

Political processes and circumstances in the two countries are significant for understanding the nature of the land reform programmes and the trajectory it has taken thus far. Liberation struggles were undertaken in both countries during the 80 – 90's and culminated in relatively peaceful negotiated constitutional democracies of majority rule. Provisions for land reform policies and their legislative frameworks were incorporated in the respective constitutions. Within the spirit of national reconciliation, the constitutions intend to address historic injustices and simultaneously entrench democratic principles (Kariuki, 2007: 99, 104).

Policy formulation on land reform and related matters were approached through consultative processes and various studies involving numerous government and civil society stakeholders in both countries. In South Africa the National Land Committee formed in the 1990's and joined the debate on land reform, in Namibia stakeholders participated in a national land conference held in 1991. Also, the World Bank assisted and influenced South Africa's land reform policy during the negotiating period in 1993 when it presented a proposal 'Options for Land Reform and Rural Restructuring' for a land redistribution programme (Walker, 2005: 815) . In Namibia the process was facilitated by SWAPO, very soon after independence, when a national conference on land

was held in 1991. South Africa's policy formulation process was similar, but more extensive in consultation (Moyo, 2007: 11). In South Africa, it led to the expeditious passing of the Restitution of Land Rights Act (Act 22 of 1994).

As a result of the policy formulation process, the White Paper on the South African Land Policy of 1997 set out the land reform policy and stands on three legs: a) restitution, b) redistribution, and c) land tenure reform (Cliffe, 2000: 273; Sibanda, 2001: 2). Namibia's land reform policy also has three main components: a) redistributive land reform, b) affirmative action loan scheme, and c) development of resettlement projects in communal areas. What follows is a comparison between the South African and Namibian land reform policies by highlighting and describing the similarities and differences between the programmes pertaining to land restitution and redistribution. Introducing this comparison, is a discussion of the legal and institutional frameworks – as set out in the respective constitutions – which are the building blocks that land reform stands on.

The new constitutions of both post-apartheid South Africa and post-independence Namibia were negotiated through lengthy processes. Not all negotiating parties' demands could be incorporated. Concessions had to be made. But both countries included provisions for land reform in their constitutions. Certain rights are provided for and provisions are made in the new constitutions that are crucial for the governments to enable a land reform programme. For the two countries the constitution is the supreme law to which all other legislation and policies need to be aligned with. A comparison between the two constitutions and their respective provisions for a land reform programme follows.

Private property rights are protected in Section 25 of the South African constitution (Act 108 of 1996). According to this clause, no-one can arbitrarily be deprived of property, unless the state decides to expropriate it 'in the public interest' (Walker, 2005: 815-816). Land reform is included in the definition of 'the public interest'. This clause therefore further enables the government to use its right to enact the land reform policy through the

expropriation of land for the purposes of restitution or redistribution (Adams & Howell, 2001: 2). Namibia's constitution also includes the right to private property as a fundamental human right in Article 16(1) (Hunter, 2004: 129; Treeger, 2004: 2). This clause also states that legislation may be formulated to 'regulate' land holding by foreign nationals and give government the right to 'acquire' it.

If the rights of a land owner prohibit the state to redress the consequences of racial discrimination, then the South African constitution in sections 36(1) and 25(8) entitles the state to limit the rights of the land owner (Marais, 2008: 23). Section 25(3) of the constitution provides for a list of considerations to determine the amount of compensation paid for expropriation. In June 2008 an amendment bill to the Expropriation Act (Act 63 of 1975) was tabled and proposed that the Minister of Agricultural and Land Affairs should determine the compensation amount. The compensation amount has to be 'just and equitable', while market-value should be taken into consideration (Rabkin, 2008). This Bill, however, was withdrawn in 2008.

Similarly, Namibia has a clause – Article 16(2) – which gives government legal right to expropriate property (Hunter, 2004: 129; Treeger, 2004: 2-3). Expropriation should be done 'in the public interest', upon which the expropriation authority can decide. Further requirements for the conditions on which expropriation is to be done as well as how to determine 'just compensation', are stipulated in an Act of Parliament – the Agricultural (Commercial) Land Reform Act (Act 6 of 1995). Again, market-related prices are only a criterion to consider for compensation. These provisions are the legal framework within which the government enacts its land reform policy (Fuller, 2004: 83). *Landbouweekblad* ("Namibië se grondhervorming", 2007: 16) reports that only five farms have been expropriated thus far, all having received compensation.

In terms of redistribution, the South African constitution says in Section 25(5) that the State must 'foster conditions which enable citizens to obtain access to land on an equitable basis' and this should be done 'within its available resources'. Redistribution of land should be carried out and the State should provide the means to enable this

(Bosman, 2007: 4). In comparison, the Namibian constitution proclaims fundamental freedoms in Article 21 and says everyone has the right to (g) move freely throughout Namibia; and (h) reside and settle in any part of Namibia. These provisions are significant for Namibia's redistribution and resettlement policies.

Land tenure reform is also provided for in the South African constitution. Section 25(6) provides for an Act of Parliament to determine comparable redress or legally secure tenure to those whose tenure of land is legally insecure due to racially discriminatory laws or practices in the past (Bosman, 2007: 4).

An 'equality clause' in the Bill of Rights determines that all citizens in South Africa are equal before the law. Walker (2005b: 815) writes that this is a significant inclusion because prior to 1994 the law – also on land rights – discriminated against other than white people, and due to this clause equality was legally established. It is also a corrective measure which obligates the government to rectify inequalities (such as that in land holding). Article 10 in Namibia's constitution states that all persons are equal before the law and it provides freedom from discrimination.

Already in the interim constitution (Act 200 of 1993) of South Africa, restitution was recognised as a constitutional right (De Villiers, 2003: 47). The right to have land restored was carried over to the final constitution (Act 108 of 1996) in Section 25(7) (Kariuki, 2007: 107). To operationalise land restitution, the constitution includes an institutional framework which establishes the Commission on the Restitution of Land Rights and the Land Claims Court. Namibia's constitution is different, because it does not make provision for land restitution.

4.2 RESTITUTION

Land restitution is a land reform policy that seeks to restore land to those who were forcefully removed from it, as well as to restore secure rights in land to those who were deprived of it due to racially discriminatory legislation and policies.

4.2.1 SIMILARITIES

Land ownership is highly unequal and divided along racial lines in both countries. Many indigenous black peoples were dispossessed of their ancestral land by white settlers (Adams & Howell, 2001: 1). During the two countries' respective liberation struggles it was recognised that the rights to land ownership and access to land that were unjustly taken away and withheld from black people had to be redressed in the new democratic dispensation. Namibia's independence government SWAPO of 1990 and South Africa's first democratically elected government in 1994 incorporated 'justice and reconciliation' as part of their land reform policy objectives (Cliffe, 2000: 275; Okafor, 2006: 2; Geingob, 2005: 23). The aim is to correct the wrongs done to those who suffered the consequences of injustices, but to do it in a conciliatory way. In both cases, the willing buyer – willing seller principles applied. But one of the major differences (see hereunder) was that restitution would be applied in South Africa, while it was not the case in Namibia.

4.2.2 DIFFERENCES

Minority ethnic groups in Namibia, the Damara, Herero and Nama, argued for the restitution of their ancestral land. It was mainly these groups in the southern parts of the country who were dispossessed of their land under German and South African laws and legislation (Adams & Howell, 2001: 4; Erichsen, 2008: 9-11; Hunter, 2004: 3). After independence in 1990, at the National Conference on Land Reform and the Land Question held in Namibia in 1991, it was deliberated that a restitution process would not be pursued (De Villiers, 2003: 34; Werner, 2001: 5-6).

The Namibian government and stakeholders in the land question made the decision that restitution of land, or alternative redress would, not be granted to the Damara, Herero, Nama or any other groups. The reasons upheld for this decision are that too many claims were conflicting, were of a sensitive nature and there were competing claims which were all too complicated to resolve in a conciliatory manner (Kariuki, 2007: 107). Restitution was therefore rendered practically impossible and not pursued as part of Namibia's land

reform programme. Instead, all historically disadvantaged Namibians would be eligible to receive redress under the wider redistribution programme (Hunter, 2004: 3).

Different from the case of Namibia, a restitution policy has been formulated and implemented in South Africa as part of the land reform programme (Kariuki, 2007: 107). The constitution of democratic South Africa (Section 25 (7)) recognises the right to have land restored as a constitutional right (De Villiers, 2003: 47; Ntsebeza, 2007a: 117). All people dispossessed of land and land rights under racially discriminatory legislation, after the date of promulgation of the Natives Land Act (Act 27 of 1913) on 19 June 1913, had the opportunity to lodge a substantiated claim at the Commission on the Restitution of Land Rights and demand redress. It is required that the government compensate the existing owner whose property is under claim and also to pay redress to the claimant; the commitment is not limited by budgetary provisions or policy changes (Cliffe, 2000: 275). Dispossession did not only affect minority groups and therefore all coloureds, Indian and black South Africans who can prove dispossession (also under the Group Areas Acts of 1950 and 1966), are eligible for restitution.

The Restitution of Land Rights Act (Act 22 of 1994) was passed in November 1994 (Walker, 2005: 817) as the first 'transformation' legislation of democratic South Africa. This act provided for the legal and institutional requirements of the land restitution process which was intended to be finalised by 2005. Approximately 850 000 hectares of land had been transferred to restitution claimants by 2005, comprising about one per cent of commercial farm land in South Africa (Walker, 2005: 817-818). Due to slow progress and delivery, the deadline to finalise claims was extended to 31 March 2008, but by March 2008 another 4 891 claims out of a total of 79 696 claims were still not finalised (Bosman, 2007: 6; SAIRR, 2007: 383; PMG, 2008: accessed online 23 March). Unlike Namibia, South Africa provides redress to specific claimants through restitution in terms of financial compensation, the restoration of land under claim or alternative land. Land that is returned under restitution contributes to the target of redistributing 30 per cent of agricultural land to blacks by 2014.

Another difference between South Africa and Namibia is that the South African government has used its powers to expropriate land for the purposes of restitution, while Namibia does not pursue expropriation for this purpose. An amendment in 2004 to The Restitution of Land Rights Act (Act 22 of 1994) simplified the procedure and appropriated more rights to the Minister of Land Affairs to expropriate land (SAIRR, 2007: 421-422). In June 2005 the first privately owned land was expropriated within the legal framework and due processes (SAIRR, 2006: 444). Expropriation was used for the second time by the state on a farm called Callais (“State to take”, 2008) in the Limpopo Province. These properties were identified in restitution claims as land to be returned to its former black owners. For both properties compensation was paid, as the law requires.

4.3 REDISTRIBUTION

Land redistribution aims to allocate land to black people in an attempt to change the racially skewed land ownership pattern. Beneficiaries of this programme include the landless poor, farm workers, emerging black farmers and labour tenants. It is generally the most actively pursued dimension of land reform programmes.

4.3.1 SIMILARITIES

South Africa and Namibia’s land redistribution policies are similar in various aspects. Commonalities in the two respective land redistribution policies can be found in the trajectory path the policies have embarked on, the strategies employed to acquire and deliver land which pertains to the role of the state and the market, and also the principles and management of the policies.

A common trajectory is detected in South Africa’s and Namibia’s land reform policies. Moyo (2007: 4-5) explains that both countries’ land reform policies combine the ‘merchant path’ and to a lesser degree the ‘rural poor path’. According to Moyo the ‘merchant path’ is when non-rural capital (merchant capital, bureaucrats, and professionals) gain access to land via the state, the market or land reform. Although they exercise smaller scale farming, they are still integrated into export markets and global agro-industry. Moyo writes about the ‘rural poor path’ that is followed to a lesser degree.

This path refers to a mass of proletarianised peasants, including displaced and insecure workers who struggle to re-peasantise and only acquire a family plot for petty-commodity production and social security instead of gaining control over the production and trade of high-value resources. South Africa and Namibia are similar to the extent that each country tends to preserve large-scale agriculture through their land reform policies.

The above mentioned tendency is evident in policies that play to the advantage of progressive commercial black farmers and provide more investment and support to them than to the smaller and 'poor and less able' farmers (Kariuki, 2007: 108). In both countries evidence show that the market-based grant programmes, respectively the Affirmative Action Loan Scheme (AALS) of Namibia and the Land Redistribution for Agricultural Development (LRAD) programme of South Africa focus on and are accessible to upcoming commercial black farmers rather than the poorer rural households. Also, these programmes transfer more land to more people at a faster pace than other grant programmes, such as Namibia's National Resettlement Policy (NRP) and South Africa's Settlement/Land Acquisition Grant (SLAG), which cater for the poorest of the poor rural households (Aliber & Mokoena, 2003: 331-335; Okafor, 2006: 88; Sherbourne, 2004b: 2). It can be said that the upcoming commercial black farmers follow the 'merchant path' while the poorer households are on the 'rural poor path'.

The 'equity' versus 'production' debate takes this issue of who really benefits from land reform further. Dirk Kotzé, professor at the Department of Political Sciences at Unisa (Botes, 2008: 67), describes two prevailing perspectives on the meaning of land ownership and the role of land redistribution. One – the 'equity' debate – is that land is not perceived to be an economic investment, but rather valued in terms of its historical heritage and social meaning (similar to Moyo's rural poor path). The second perception – the 'production' debate – is that land should not be left unproductive, but should be cultivated and used for economic purposes (similar to Moyo's merchant path). It is difficult to reconcile these two perspectives in a land reform programme.

Kotzé believes that discussion documents at Polokwane in 2007 indicate that the ANC favours a more social perspective to land reform in South Africa (Botes, 2008: 67). Although the economic importance and sustainable use of land as well as agricultural development have been acknowledged as important aspects, there is little consensus on how to bring land reform in tune with rural agricultural reform (Genis, 2008: 12). Both the Reconstruction and Development Programme (RDP) of 1994 and the Integrated and Sustainable Rural Development Strategy (ISRDS) of 2000 view land reform as a crucial contributor to rural development, yet it does not stipulate how land reform integrates with these programmes (Kariuki, 2007: 106 – 107).

Namibia's land reform policy resembles that of South Africa's because both experience the ambiguity between the aspects of 'equity' and 'production' in their policies. Namibia also lacks integration and coordination between the three pillar policies on which economic transformation rests: land reform, agrarian change and rural development. Various policies in Namibia, two of which are the National Poverty Reduction Action Program 2001-2005 and Vision 2030, express the importance of land and agriculture for alleviating poverty and contributing to economic production levels. Contrary to this, land reform is not explicitly linked to poverty reduction efforts and in the Poverty Reduction Strategy for Namibia of 1998, land redistribution is not considered to have a long-term role in poverty alleviation. (Kariuki, 2007: 106; Werner, 2004a: 117).

A land redistribution policy forms part of a wider strategy which is implemented through the use of a model or a combination of models for land reform. Moyo (2007: 5-7) writes that the models - 'state', 'market', and 'popular' - entail five elements of land reform, which are: a) land selection; b) acquisition method; c) beneficiaries selection; d) the method of land transfer to beneficiaries, and e) beneficiary support. Although variations occur, Namibia and South Africa both employ simultaneously a 'state' and a 'market' model as land redistribution strategies.

Both the state apparatuses in South Africa and Namibia acquire land for redistribution through the reformist willing seller – willing buyer mechanism, a market-based method

of the 'state' model (Moyo, 2007: 5-6). According to this mechanism the market (i.e. landlords) voluntarily selects the land to be sold on the open market which the state will then purchase with due compensation to the landlords. Title is then transferred to the selected beneficiaries. In both countries the willing seller – willing buyer mechanism is used as the starting point for negotiating land transferrals. When negotiations stall and a satisfactory agreement cannot be agreed upon, the state can then use the alternative method of expropriation to acquire land.

South Africa's 1997 White Paper on Land Reform and Namibia's Agricultural (Commercial) Land Reform Act (Act 6 of 1995) both recommend the willing seller – willing buyer mechanism for land acquisition (Hall, 2007: 88). In Namibia the government has the 'option of first refusal' on all land that is to be sold where after it will be available for purchase on the open market. It has been said that in both countries the willing seller – willing buyer mechanism is the cause for inflated land prices (Nevin, 2004: 28). Since the market (comprising of current white land owners) decide what land is made available on the market as well as what price is demanded for this land, the land redistribution programme and land acquisition are not driven by the government or the beneficiaries (Moyo, 2007: 6-8). But one cannot say that they are driven by sellers only. Policies and courts also play roles.

Both countries' governments have recently indicated that they are not satisfied with the willing seller – willing buyer mechanism and they intend to speed up the land acquisition process. In 2004 the Namibian government announced that 192 foreign owned farms are earmarked for expropriation (Nevin, 2004: 28) of which only four were expropriated by mid 2007. Similarly, South Africa has taken measures to speed up land reform. Restitution was orderly but slow. First, in 2006 the Minister of Land Affairs, Lulu Xingwana, announced that if, after six months of the initial willing seller – willing buyer negotiations no agreement has been reached, the land in question – presumably post-restitution – would be expropriated (SAIRR, 2007). Secondly, in 2008 an amendment to the Expropriation Act (Act 63 of 1975) proposed that the lengthy process should be short circuited by leaving the decision of expropriation and amount of compensation with the

Minister of Agriculture and Land Affairs (Steenkamp, 2008: 2; Duvenhage, 2008: 1). Sellers were prohibited from appealing to courts. But after much resistance, this Bill was shelved in 2008. It may re-appear in future.

Measures have been taken to speed up the lagging process of land acquisition, but the two countries are still committed to a legalistic land reform programme and states that they will only use their expropriation powers after the willing seller – willing buyer negotiations have stalled. The due legal process is still followed according to the constitutional and policy provisions and appropriate compensation have so far been paid to the owners (Mosotho & Tsiu, 2008: 12).

4.3.2 DIFFERENCES

There are differences in the types of grants or state funds that beneficiaries of the land redistribution and resettlement policies can access. South Africa's land redistribution programme started off with the Settlement/Land Acquisition Grant (SLAG). This was linked to the housing grant and provided a maximum of R 16 000 to one household to use in the purchase of land or for resettlement purposes (Aliber & Mokoena, 2003: 331 – 335). A new phase for land reform announced the Land Redistribution for Agricultural Development (LRAD) initiative. This grant is more market-based and requires a financial contribution in order for a beneficiary to qualify for it. Consequently the very poor do not have access to this grant, but the upcoming commercial black farmers benefit from this grant as they can make an initial contribution.

Under the redistribution programme in Namibia the National Resettlement Policy (NRP) selects the poorest of the poor beneficiaries for resettlement (Sherbourne, 2004b: 2). This programme has redistributed three times less the amount of land and resettled less people than the Affirmative Action Loan Scheme (AALS) of 1992. Emerging black farmers have been prioritised under the AALS to apply for and receive an Agri-bank subsidised loan for resettlement (Kariuki, 2007: 108). The AALS is a market-based mechanism, less cumbersome than the NRP and beneficiaries can actually own the land they are resettled

on, while the NRP only leases the land to the beneficiaries (Sherbourne, 2004a: 15 and 2004b: 2).

Land reform is financially a very expensive programme (Moyo, 2007: 29 – 30). Each sub-programme of the land reform policy has its own costs. In South Africa, the land restitution programme requires financial resources for claimants who demand financial redress, for the acquisition of land to reallocate to beneficiaries and for the due compensation paid to owners of land that is acquired by the state. Namibia does not have a restitution programme, but as in the case of South Africa, there are redistribution and resettlement programmes that cannot be carried out in the absence of adequate financial resources. This includes expropriation, but this process is also slow. Other costs, which are crucial for the success of land reform, are infrastructure development, after-settlement support and extension services. Where these resources should come from, remains a controversial debate about ethical responsibility and agency in providing the resources, as well as the amount and availability of it.

South Africa's land redistribution programme tries to spread the costs and responsibilities between government, beneficiaries and other stakeholders. Through the SLAG and LRAD programmes the government provides a fixed lump sum of money for the free use of beneficiaries while also providing for their long-term total cost outlays (Moyo, 2007: 29 – 30). The Department of Land Affairs (DLA) receives its capital budgetary allocation from the National Treasury. Only for the year 2002/03 did the DLA manage to spend its entire budget, it was also the first time. During 2005/06 the restitution budget was again under-spent by 30 per cent and the redistribution budget by 21 per cent (Lahiff, 2007a: 16 – 17). Chances are the DLA's budget allocation will not be increased soon, due to the constant under-spending. As reported by Van Wyk (2008: 99) the DLA needs R 74 billion to redistribute another 19, 8 million hectares land by 2014. Currently R 3, 3 billion for land reform and R 1, 6 billion for restitution is available which will not be enough to reach the target. With regards to finance for pre- and post-settlement services to beneficiaries, the DLA outsource many of these functions to donor-financed facilities to provide beneficiaries with the needed specialist services (Adams & Howell, 2001: 3).

The Ministry of Lands, Resettlement and Rehabilitation (MLRR) is charged with implementing the land reform policy programmes in Namibia using the capital budget it is allocated by the government. Since 1996/7 a budget of N\$ 20 million per year was made available to the MLRR (Sherbourne, 2004b: 2 – 3). Until 2000/1 only two thirds of this allocated budget was actually spent, nevertheless in December 2000 it was announced that another N\$1 billion was needed to acquire 9, 5 million hectares of land for redistribution and resettlement (Adams & Howell, 2001: 5). The next year, however, the actual expenditure exceeded the budgeted expenditure. The budget was increased to N\$ 50 million per year in 2003/04 and still is this same amount today (Mosotho & Tsiu, 2008: 9). At the end of 2006/7 the amount of 336 429 hectares of land were purchased at the cost of N\$ 72 million (“Namibië begin”, 2007: 9). Namibia’s financial coffers were given a boost in 2003 when the German government provided a development package of R 200 million towards land reform. Because of Namibia’s small population of about two million, it is the largest recipient of German aid per capita in Africa (“Hanging in”, 2006: 29).

Land taxation has been introduced in 2001 in Namibia as an incentive to encourage and facilitate the release of surplus land by owners on the open market (Moyo, 2007: 13; Odendaal, 2006: 21). Because of this tax, more land will then become available for purchase by the government, due to owners wanting to avoid costs on unutilised or excess land. The revenue generated from this land tax (collected for the first time in 2005/06) goes towards the Land Acquisition and Development Fund used by the government to purchase land for the purposes of land redistribution and resettlement (Werner, 1997: 6). On the other hand, it could encourage farmers to optimize their land use. In South Africa the legislation for such a land tax has been proposed and is under investigation (Kariuki, 2007: 108).

In terms of establishing targets for the land redistribution programmes, the two countries differ. Although neither countries have as of yet reached their respective redistribution targets, Namibia seems to be progressing quicker maybe because its plans are less ambitious. South Africa sets the target of redistributing 30 per cent of agricultural land

(translating into 25 million hectares land) to black owners by 2014. By 2007 the amount of 4 million hectares of land has been transferred to blacks (De Waal, 2007a: 10) which equals less than six per cent. Most of this was for restitution which is coming to an end. At this pace, the target of 30 per cent will only be reached in 54 years' time, unless the pace is increased five fold (Kariuki, 2007: 111).

Namibia's Prime Minister, Nahas Angula, announced in 2006 that it is the government's target to redistribute 15 million hectares of land to previously disadvantaged people by 2020. Approximately 6 million hectares have been acquired by 2007, meaning more than half (9 million hectares) still needs to be acquired ("Namibië se grondhervorming", 2007: 16; "Namibië begin", 2007: 9). It is estimated, by the Institute for Public Policy Research (2003), that another 40 years will be needed to reach the target (Kariuki, 2007: 111). In terms of beneficiaries, there are and estimated 243 000 eligible for resettlement. By 2003 only 30 720 have benefited from the resettlement programme (Mosotho & Tsiu, 2008: 6, 8).

4.4. OTHER ASPECTS

4.4.1 SIMILARITIES

Apartheid policies prevalent in South Africa were mirrored in Namibia when South Africa held Namibia as a mandate. One of the legacies of apartheid is the creation and consolidation of the top-down institutional structure of tribal authorities which were in charge of land allocation and management in the homelands where all blacks had to live (Kariuki, 2007: 100; Moyo, 2007: 26). Tribal authorities functioned as an extended arm of the central government in communal areas and entrenched the authoritarian structure of the bifurcate state that was created.

In South Africa the tribal authorities were created by the promulgation of the Bantu Authorities Act of 1951 (Fraser, 2007: 839-840). The homeland area constituted 17 million hectares from a total of 87 million hectares of agricultural land. Similarly in Namibia, homelands were created on the recommendation of the Odendaal Commission in 1962. Namibia's homelands constituted approximately 33 million hectares land from a

total of 82 million hectares. In some of the homelands, for example in Owambo, Kavango and Caprivi, white settlers never possessed land. In comparison, South Africa's homelands covered less than half the amount of land than Namibia's homelands and were thus much more densely populated since its population was overall bigger.

Like in South Africa, a dual agricultural system has emerged from the homelands system in Namibia. Land is held as freehold title by commercial farmers (white) who received state support to ensure economic growth and prospering wealth in the commercial agricultural sector, while land was held communally and under customary and traditional law in the underdeveloped homelands by blacks with a desperate need for, but absence of state support services (Kariuki, 2007: 101). Blacks could not hold land in freehold title, nor could they freely reside on any land outside the homelands. Communal areas are known for being over populated, congested and thus contributing to land degradation.

The tenure rights of blacks in the homeland areas, but also tenure rights of black farm workers living on (white) farms, are insecure. Part of the land reform programmes of both South Africa and Namibia pertains to the reform of these insecure, de facto tenure rights that mostly do not enjoy formal legal recognition (Kariuki, 2007: 109). Farm workers are of great concern because ever since the cheap labour supply system was established and perpetuated by the segregationist policies of racial inequality, they are particularly vulnerable to arbitrary evictions and the abuse of basic labour rights. Although both countries implemented legislation to address the insecure relationship between farm workers and farm owners, it is poorly enforced.

Namibia's National Land Tenure Policy is a mechanism to secure farm workers' tenure rights (Kariuki, 2007: 109), but ironically the resettlement policy attributes to their plight and risk of losing or being evicted off the land they reside on. *Landbouweekblad* ("Namibië sukkel", 2007: 82) reports that a study done by the Law Assistance Centre determined that the Namibian resettlement programme disadvantages more people than it actually benefits. For instance, when a farm is redistributed and five beneficiary families are resettled on that land, the average of six farm workers and their dependent families,

who resided on the farm that has been redistributed, lose their jobs, home and livelihood. Also, this farmland has been subdivided into five smaller units which are too small for sustainable and equitable agricultural production activities.

Land reform's success should also be related to the policy's delivery and facilitation of positive outcomes in terms of sustainability, political significance, economic consequences and the impact on the social environment and natural resources. This is the opinion of Jan de Wet, the president of the Agricultural Union in Namibia ("Land reform", 2004: 45). In 2004 an estimated 70 per cent of the Namibian population was dependent on agriculture for a livelihood. The agricultural industry employed about 25 per cent of the population and agriculture contributed almost 12 per cent to GDP indirectly. These numbers indicate the significance of the role that land plays in the majority of the Namibian populations' livelihoods who are subsistence farmers and do not own land or who are employed as farm workers (Diescho, 1994: 95). If farm workers' tenure rights are not protected and land redistributed for resettlement is subdivided into uneconomical units, the netto effect in terms of sustainability, as well as the economic and social consequences of land reform will calculate to a loss.

The Extension of Security of Tenure Act (Act 62 of 1997) as well as the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (Act 19 of 1998) are the legislation in South Africa to reform the insecure tenure of farm workers (Bosman, 2007: 6). *The Sunday Times* (Jordan, 2007: 4) reported that more people have been evicted from commercial farms during 2006 than the 9 405 that have benefited from redistribution. The findings of the South African Human Sciences Research Council was that land reform could possibly cause the loss of 300 000 farm jobs within the next 15 years, 400 000 jobs have already been lost since 1985. Similar to the case of Namibia, there is a tendency that farm workers are neglected in the land reform policy and still suffer the consequences of insecure tenure rights. Also, farm workers are not targeted to be beneficiaries of land redistribution and are thus excluded from the process (Moyo, 2007: 18).

One of the major impediments to the effective implementation of the land reform programmes in South Africa and Namibia, is the dire state of the Department of Land Affairs and the Ministry of Lands, Resettlement and Rehabilitation. These agencies are also responsible for the coordination of the sub-programmes of land reform. The DLA in South Africa, as reported by the PMG (online 23/3/2008), has a 24, 4 per cent job vacancy rate. Also, there is a lack of coordination and poor communication between the different state departments that need to work together to implement the different facets of land reform (Lahiff, 2007a: 15). The provision of pre- and post-settlement services in both countries is not comprehensive enough as is evident in the many failures of inexperienced, poor and resource deprived newly settled farmers and their projects. Namibia's institutional structure for land reform is also inadequately staffed. Problems in the MLRR include that of human capacity, inexperience, a lack of field equipment and also inadequate infrastructural support (Werner, 2004a: 123).

4.4.2 DIFFERENCES

Blacks who still reside in traditional communal areas (the former homelands) are under the jurisdiction of traditional authorities. These authorities fulfil the role of allocating and distributing land in the communal areas. Traditionally the residents do not own the land they are allocated, instead they only lease it temporarily. According to the provisions in the constitution of 1996, the South African government has to enable citizens to 'gain access to land on an equitable basis and give legal recognition to land tenure rights held by communities and their members of communal land' (Kariuki, 2007: 109-110). The Communal Land Rights Act provides for the insecure land rights to be converted to statutory rights. Abundant criticism of this legislation said it is too complex, it compromises democratic governance in communal areas and it will potentially cause conflict between traditional authorities, local governments and communities.

In 2002 Namibia's Communal Land Reform Act (Act 5 of 2002) was passed as the legislation to address insecure land tenure rights (Kariuki, 2007: 110). Keulder (1997, 1) and Werner (2004a: 113) write that this act established that traditional authorities would still allocate land in communal areas, but that their jurisdiction will be reduced and

transferred to the Land Boards in an attempt to bring customary land under state control. Also, this act aims to make unused communal land available and to contribute to agricultural development.

In terms of the objectives of land (tenure) reform in communal areas, Namibia's policy has prioritized creating space and reducing land degradation with the help of land use plans in communal areas (Moyo, 2007: 10). However, land rights in communal areas have not received much attention yet (Hunter, 2004: 3). South Africa has not been giving the much needed attention to the communal areas and land tenure systems in these communal areas or to land use planning. Little progress has been made and it seems that there is a lack of political will to pursue this policy as it is a political minefield of contradictory issues between democracy and authoritarian traditional authority structures.

South Africa has a national election coming up in the first six months of 2009. Currently an uncertain political climate roams the country with the possibility of a split in the ruling party, the ANC. Land reform, also tenure reform in rural areas, may become divisive political debates in future. In addition to these political uncertainties and consequent social tensions, the global economy is suffering under a financial debt crisis of which the intensity of impact on South Africa's domestic economy will only become clearer later. International food prices have been on the increase for some time now, together with the global food shortage that puts additional pressure on efficient agricultural production. It remains to be seen whether the issue of land reform will be used for political mobilisation on any party's election mandate.

CHAPTER V

CONCLUSION

5.1 MAIN CONCLUSIONS

The main findings of this study can be summed up in the following points:

- A legacy of colonisation and apartheid policies dispossessed blacks of vast areas of land as well as their rights in land and created a greatly skewed land ownership pattern along racial lines in both South Africa and Namibia that is still prevalent today
- Liberation struggles in both countries culminated in peacefully negotiated transitions to democratic dispensations whose constitutions incorporated provisions for land reform to redress the injustices of the past and to transform the consequent socio-economic inequalities
- The main difference between the land reform policies in South Africa and Namibia is the fact that South Africa is pursuing a land restitution programme but not Namibia
- Both countries employ similar methods of land acquisition, which are the willing seller – willing buyer market-based mechanism and expropriation (to date, used cautiously by both countries)
- Impediments to the speedy and successful delivery of the land reform programmes are similar in both countries: budgetary constraints, a cumbersome administrative and legal process of land transferral under the willing seller – willing buyer mechanism, incapacity problems at the implementing institutions, and inadequate extension services
- Issues that arise from the two countries are related to the debate of ‘equity’ versus ‘production’ and mainly revolves around whether land reform contributes sufficiently to not only the equity argument, but to agricultural production and food security as well.

5.2 ASSESSMENT OF THE STUDY

Looking back at the purpose of this study, it can be said that many of the questions it set out to answer, have been addressed to the limited extent that this research allows. It is limited because this research is only based on existing literature studies and does not include any newly generated empirical data. Two countries, South Africa and Namibia are under study as units of analysis in this thesis. Focus falls on the description and systematic comparison of their respective land redistribution and restitution policies, which is also the main aim of this study. Purposefully, the political backgrounds, legislative and institutional frameworks, as well as the social and economic impacts of the policies are compared to one another.

In chapters two and three clear description and analysis is given on the land reform policies of South African and Namibia, enough to constitute a rich comparative analysis in chapter four. Similarities and differences are clearly indicated, but no assessment in terms of which country's policy is rated superior has been made, because it was not the purpose of this study. In this regard, reference has only been made to individual cases of progress or success, rather than an overall assessment.

It was found that far more literature and research data is available on South Africa's land reform policy than on that of Namibia. The reason for this is unknown, but it could be that land reform in South Africa is more complex – mainly due to the inclusion of restitution – than in Namibia, or that the participation in and contribution to the evaluation and monitoring processes (in terms of independent research) of land reform is more extensive in South Africa.

5.3 THEMES FOR FURTHER RESEARCH

The scope of this study covered the land reform policies – specifically the land restitution and land redistribution programmes – of two countries in Southern Africa, namely South Africa and Namibia. The delimitations of this study are the limited attention bestowed on land tenure reform and post-settlement support services. Future research on land tenure policies and post-settlement development programmes can thus add richness to this study. In particular, the insecure land tenure rights and the plight of farm workers and women in communal rural areas can be investigated more in-depth. There is a broad array of options on programmes for post-settlement support available, but further research is needed to determine a more precise estimate of the economic viability and costs, as well as the environmental impact and sustainability of it in terms of its outcomes. Such a study can contribute to ameliorating the success rate of agricultural production on the land of resettled beneficiaries.

Case studies of specific geographical regions or alternatively communities which are impacted by any aspect of land reform, can be focused upon as a smaller unit of analysis to be researched in its context. This study will require that the various stakeholders (government departments, non-governmental organisations, commercial agriculture, and development planners) all contribute to research on the different aspects of their involvement with the land reform programme. Consequently, more statistics and data will be available and can explain the detailed processes pertaining to land reform.

Also, the inclusion of research on other countries in the Southern African Development Community, or other countries of Asia and Latin America that had settler colonies and/or land reform policies, can broaden the scope for further cross country comparative analyses. As a result a framework for land reform policy developments, options and outcomes will be readily available. Hopefully, this comparative study will add to the information required for wider African, or even cross-continental research, on this important topic.

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